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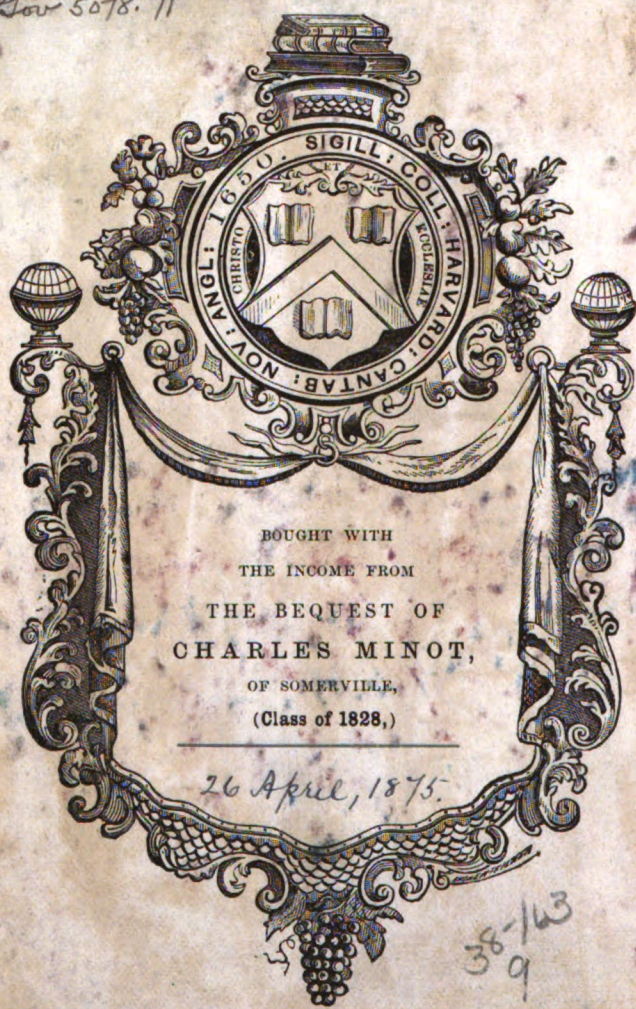
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LAW DICTIONARY

AND GLOSSARY:

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL TERMS OF THE COMMON
AND CIVIL LAW, TOGETHER WITH TRANSLATIONS AND EXPLANATIONS
OF THE VARIOUS TECHNICAL PHRASES IN DIFFERENT LANGUAGES,
OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND
STANDARD TREATISES; EMBRACING, ALSO, ALL
THE PRINCIPAL COMMON AND CIVIL
LAW MAXIMS.

COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY,
AND ADAPTED TO THE
JURISPRUDENCE OF THE UNITED STATES;

WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL,

By **ALEXANDER M. BURRILL,**
COUNSELLOR AT LAW.

Author of a Treatise on Voluntary Assignments, a Treatise on Circumstantial Evidence, and a Treatise on Practice, &c.

Vocum origines rationesque [Labee] percalluerat; eaque principue scientia ad emendandos plerosque juris laqueos utebatur.
A. GELLIVS, Noct. Att. xiii. 10.

SECOND EDITION.

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TO THE

HON. WILLIAM KENT, LL. D.

DEAR SIR,—

I am sensible of a peculiar propriety in availing myself of your permission to inscribe to you the following work. It embodies (in however imperfect a form) the results of studies which received their earliest impulse and direction under the eye of your venerated father, and it is chiefly designed for use in a profession, in the practical duties of which I first received instruction from yourself. Knowing that, in you, professional eminence has ever been accompanied and adorned by the accomplishments of literature, I feel the less hesitation in offering to your notice a work which, in its general scope and bearing, belongs, perhaps, quite as much to the department of literature as to that of law. Knowing, too, that you are not one of those who, in their desire for improvement, would dis sever the science of jurisprudence from its close dependence on the wisdom and learning of the past, I have hoped that you would not view with disapprobation or distaste the frequent references its pages contain to the lore of an almost forgotten age. But my highest satisfaction is in dedicating it to you, as a testimonial of personal esteem and regard, and as an expression of my sense of the unvarying kindness I have ever experienced at your hands.

With every wish for your future happiness, and with sentiments of the greatest respect,

I remain faithfully,

Your friend and servant,

ALEX. M. BURRILL.

New-York, Dec. 20th, 1850.

P R E F A C E .

IN the present edition of the following work, the author has merely endeavored to fill up more completely the outline of his plan, as explained in the original preface, preserving throughout the double character of Dictionary and Glossary.

I. As a Dictionary, the work has been strictly confined, as before, to the province of *definition*; and, within this limit, ample materials for enlargement and improvement have been found to present themselves. Considerable additions have been made under both of the two leading divisions of subjects belonging to this department, namely, technical words, or *law terms*, properly so called, and *common words* which have been made the subjects of judicial definition, in the course of construing or expounding written instruments.

In regard to the first of these, little occasion has been found for special remark in giving the appropriate definitions in each case,—technical words being almost invariably understood in technical senses, and in accordance with certain fixed rules, derived, in most instances, from a long and uniform course of professional usage.

In regard to the definition of common words, however, the case has been somewhat different, for reasons which may be now explained. The two great standards of exposition, or guides to verbal interpretation, which have always been recognised and followed by lexicographers in all languages, are—first, *etymology*, as indicating the origin and composition of words, and secondly, *usage*, as determined by the example of the best authors. Etymology has always and deservedly been regarded as of the highest value and service in definition. It presents on the faces of words, the ideas they were purposely framed to express, and exhibits, in most cases with clearness, the particular objects and reasons of their formation. It was said of the great Roman jurist, Antistius Labeo, that he was thoroughly versed in these “origins and reasons of words,” and that he made effective use of this species of learning in unravelling many complicated law questions.* But the meaning of words, however clearly indicated by their etymology, is confessedly often affected and controlled by usage. Lapse of time, especially of very long periods, has constantly the effect of introducing new senses, or of modifying and extending the original and radical ones; and, in this way, words sometimes come to be used in senses entirely at variance with their strictly appropriate significations. These senses become legitimated by use, and pass as current without objection; but it is nevertheless true, as might (with some labor) be shown, that, in many instances, they are obvious perversions of language, originating either in ignorance or carelessness, and perhaps uncalled for by any real exigency.

* See the title-page.

In the *judicial* exposition of ordinary words, the recognised standards and guides are somewhat different. The courts look sometimes to their origin and reason, and sometimes to their ordinary acceptation as fixed by popular usage, but more frequently to the supposed *intent* of the parties (whether individuals or legislators) by whom they are used. But this system of interpretation, however commendable on grounds of principle, is sometimes unfortunate in its practical effects upon language, from its natural tendency to introduce and cherish diversity of opinion, resulting, in some instances, in positive uncertainty and confusion. The definitions of one or two ordinary words, intimately connected with important instruments in every day use, may be selected as examples of the tendencies just alluded to.

Indorsement is a word of the class already mentioned as carrying on their face the true elements of their meaning, and requires nothing more than simple translation to discover it. Respecting its origin and etymology, there can be no doubt. It is a word of comparatively modern formation, growing out of the necessities attending the use of written instruments during the middle ages, and rudely made up, in a law Latin form, on the peculiar principle of the times—convenience and expressiveness, rather than elegance. The object and sole object of its formation obviously was, to express the idea of a writing made upon the outside or back (*in dorso*) of another writing, either as descriptive of its contents, or of some act done to give it legal effect, or done in the course of giving it such effect. It was a term of practice, essentially directory in its character, and suggesting at once the idea of the *back* of the writing as the place, and the only place, where the additional writing was made, or was required to be made. It was sometimes termed *backing*, and, in practice, was always (as it still is) carefully confined to the sense which the word *backing* more strikingly, perhaps, but not more properly, conveys. It acquired new importance from being adopted at an early period in mercantile law and practice, as descriptive of the act by which bills of exchange and promissory notes acquired their peculiar and valuable quality of negotiability. The *back* of the instrument was, for obvious reasons of convenience, appropriated to the signature of the party who assumed a liability secondary to that of the maker or drawer, and, from the uniformity of practice in this particular, soon had the effect of giving to that party his distinctive name; so that the local position of the signature came to express, in the briefest and clearest manner, the peculiar species of liability which that signature carried with it. Here were additional reasons for adhering strictly to the essential import of the word, as it has been, in fact, preserved in mercantile usage, to this day. Notwithstanding these considerations, it has been judicially decided that the word *indorsement* does not necessarily or exclusively import a writing on the back or outside of a bill or note, but that it may be used to express a writing on the inside or *face*. This was held in England as early as the year 1717, in a case* which is of considerable interest, as affording the means of tracing this material enlargement of signification to its source in fact. It seems that, according to a former practice of the Bank of England, receipts of money paid on the notes of the bank had been written on the back, and very properly termed *indorsements*. They afterwards introduced the practice of writing them on the face of the notes, and thought proper to call them *indorsements*, also, whether from ignorance or disregard of the meaning of the word, it is not material to inquire. The prisoner, in the case just cited, was indicted for eras-

* *Rex v. Bigg*, 8 P. Wms. 419. 1 Stra. 18, 8. C.

ing such a writing on the face of a bank note, which was called in the indictment an indorsement, and claimed to be within the statute declaring the erasure of indorsements on bank notes to be a felony. The court held that, as the bank had *called* the writing in question an indorsement, and as it had always been accepted and taken to be such, it was within the words of the indictment, and they held the prisoner to be guilty. Whatever may be said of this decision, it is clear that the action of the bank in affixing to the word in question a sense the very reverse of its proper meaning, was a perversion of language calculated to introduce confusion, by breaking down important and long recognised distinctions of meaning.

Sign is another ordinary word intimately connected with the use of written instruments of every description. Like *indorsement*, it claims a Latin origin and etymon, but, unlike that word, its history goes back to a much higher antiquity—the practice of the ancient Romans. Unlike that word, too, it has materially departed from its original import, and a literal translation would scarcely be descriptive of its modern use. Its primary meaning is said to be, to write one's name on paper, or to show or declare assent or attestation by some sign or mark. There is no occasion, however, for going beyond the practice of the Romans, with whom the word *signare*, from which *sign* is formed, signified *to seal*. In the times of the Saxons it was applied to the *sign* of the cross affixed to written instruments by the parties subscribing them. At what particular period it acquired the sense of writing a name *underneath* or *at the foot* or *end* of an instrument, it is not necessary to consider. It is certain that the word has long been fixed in that sense, and is not now (either in its mercantile or popular acceptation) used in any other. In construing the celebrated provision of the Statute of Frauds in relation to promises and agreements of certain kinds, requiring a memorandum or note in writing of the agreement, *signed* by the party to be charged, or his agent, the court chose to adopt what has been termed the primary meaning of the word *sign*, and held it to be a sufficient compliance with the statute, if the name of the party to be charged appeared in *any part* of the instrument, either at the top, in the middle or at the bottom; and this exposition of the word has been settled by a long course of decisions. On the revision of the statutes of New-York, in which the provision had been literally copied from the English statute, the attention of the Revisers was directed to this word *signed*, in connection with its judicial interpretation, and they seem to have been struck with the vague and indefinite character which it gave to the whole provision, or as they themselves expressed it, “the courts found themselves perfectly at large as to what should be considered a signing.” To prevent difficulties of this sort in future, or, in other words, to avoid the evils of so latitudinarian a construction of the word, they proposed to strike it out altogether, and recommended in its place the use of the word *subscribed*, respecting the meaning of which, as expressive of an actual signing or *under-writing*, there could, it was thought, be no doubt, which recommendation was adopted. Notwithstanding this, however, when the new word came before the Supreme Court for construction,* it was treated as a synonyme of the word which had been expunged; and, adopting the view that there was no greater judicial effort in enlarging the term *subscribed* into a secondary sense than had been made by their predecessors upon the word *signed*, they actually construed it to mean as *signed* had been construed,—written on any part of the instrument, and held that the law was

* In *Davis v. Shields*, 24 *Wendell's R.* 328.

not changed by the revision. But this decision was very properly reversed by a higher court, and the reversal has since been thoroughly sustained;* the court holding that the word *subscribed* in the statute must be interpreted to mean an actual signing, in writing, of the name of the party at the end of the contract or of the memorandum thereof; a sense, it may be remarked, not only demanded by the obvious etymology of the word, but sustained by universal and unvarying usage.

Other examples might be adduced in illustration of the difficulties sometimes encountered in accepting judicial definitions of ordinary words; and the term *fixture* might also be referred to, as an instance of even a technical word, the import of which has become involved in almost hopeless confusion, in consequence of too wide a departure from the strictly appropriate meaning. But the limits of a preface forbid any further detail under this head.

II. As a Glossary, the work will be found to be enlarged considerably beyond its original limits. In this department, the author has endeavored to keep closely in view his primary design, to present as complete a collection as possible of technical terms in other languages than English, which are so copiously scattered through the books in ordinary professional use. With this view, and in order to the more complete elucidation of their meaning and application, he has freely resorted to the works from which they were originally taken. Several of these, including some which had not been previously consulted, have been read in course, and an additional variety of terms and illustrations have, by this means, been obtained from sources not ordinarily accessible. From the same sources many other words have been extracted, not properly falling under the denomination of law or technical terms, but a knowledge of which has nevertheless been found essential to any satisfactory perusal of the works in which they occur.

The archæological character thus necessarily imparted to the work may, perhaps, be considered by some readers an objection. In an age of new ideas and progressive impulses like the present, in which the technicalities of the *common law* (hitherto the principal source of our jurisprudence) have been made the object of especial attack and condemnation, and strenuous (though not always judicious) efforts employed to expunge from use even the traces and relics of the peculiar language in which those technicalities have always been expressed, the utility of a work, the avowed object of which is to preserve and perpetuate a knowledge of this language, may, perhaps, be regarded as questionable.

There are considerations, however, which go to justify the author's course even under the circumstances mentioned. Not to dwell on the admitted fact, that the more rapid the progress of change in any age, and the greater the number of words discarded from use, from whatever cause, the more obvious the necessity of works expressly devoted to their exposition—it may be doubted whether the present progressive tendencies of things are destined to lead to permanent results of the kind which have been anticipated. It may be doubted whether works, like many referred to in the following pages, which have left an indelible impression on the system to which they belong, are really destined to the complete oblivion which has been predicted for them. But however this may be, it, at least, will not be denied that a compilation claiming, like

* *Davis v. Shields*, 26 *Wendell's R.* 341. *James v. Patten*, 2 *Selden's R.* 9, S. P.

the present, to illustrate the *language of law in general*, would hardly be considered true to its object, or complete in its design, unless it exhibited with clearness the connections which necessarily exist between the old law and the new, and kept open, with all possible care, the paths to those "fountains" of learning, from which the leading minds of the profession have in all ages "preferred" to draw.

So far as terms and phrases of the character just mentioned have been derived from the *civil law*, their introduction into the present work, and even their somewhat minute illustration in some instances, appear to rest on additional grounds of utility which may secure them from objection. A marked feature of several of the reforms of the day has been an inclination in favor of the ideas and methods peculiar to the civil law, occasionally resulting in their formal adoption in practice. It is clear that whatever movements may tend to bring that system into a state of prominence which it has not hitherto enjoyed in this country, must tend to the examination and study of its peculiar fountains, also,—the collections of Justinian in their original languages. The fact that the civil no less than the common law has always had its technical terms, expressed in nearly the same language, must not be overlooked. On the whole, the ultimate result in prospect would appear to be not so much the extinction of the French and Latin of the age of Britton and Fleta, as the creation of a new necessity for an acquaintance with the Latin and Greek of the Lower Empire.

III. It remains to notice briefly, in conclusion, the principal particulars in which the work has, in the present edition, been enlarged.

As already intimated, many additional words have been extracted from the *Corpus Juris Civilis*, especially from the Digests, Code and Novels. Among these, including, in particular, such as are taken from the celebrated title of the Digests, *De Verborum Significatione*, will be found a variety of words which were made the subjects of definition and exposition by eminent Roman jurists. Several of these afford analogies of value, especially in questions arising upon the equivalent words in English.

Under the head of *Law Maxims*, considerable additions will be found to have been made. Those of the civil law have been chiefly taken from the title *De Diversis Regulis Juris* in the Digests. Those of the common law have been extracted from the best authorities, and are illustrated in the same manner as in the first edition. The plan of distributing these maxims throughout the whole body of the work, in a character which renders them easy of reference, having been approved, has also been continued without change.

Other additions comprise such as have been made from the laws of Scotland, France and Spain, both ancient and modern. The laws of Spain in particular, including what is sometimes termed Spanish-American law, having acquired new and increasing importance to American students and practitioners in some of the new states, its peculiar terms and phrases have been treated with a corresponding degree of attention.

New-York, August 1st, 1859.

PREFACE TO THE FIRST EDITION.

THE object aimed at in the following work has been solely to illustrate the *language* of the law, and, with this view, its plan has been purposely confined to the exposition of *words and phrases only*, to the exclusion of much of the matter contained in most of law dictionaries now in use. In this respect, the example of the older lexicographers, such as Cowell and Spelman, has been followed, in preference to that of writers of more modern date.

The "Interpreter" of Cowell, the earliest systematic English work of the kind, possesses also the merit of being the basis of the best English law dictionaries which have been given to the public. The unsparing use, indeed, made of this author (frequently without acknowledgment) by those who have followed him, has justified to the letter the strong expression of Spelman,*—*à plagiaris nequiter devoratus*. The "Nomo-Lexicon" of Blount is little more than a re-print of the Interpreter, (with, however, some valuable corrections,) and a very large portion of the Dictionary of Jacob has obviously been derived from the same source. The last named author seems to have been the first to introduce the practice of superadding to the definition and exposition of the terms of the law, *summaries of the law itself*, under the titles indicated by the terms explained; a practice which, though tending to give to dictionaries the form and bulk of cyclopædias, has been followed in several modern works of merit and authority.

The exclusion of this superadded matter from the plan of the present work, (as already mentioned,) has left room for more fully presenting the explanations which it is intended to convey, and which are given, it will be seen, through the double medium of *definition* and *translation*. In other words, it will be found to unite the qualities of a Dictionary and Glossary indicated in its title;—a combination which has enabled the author to present not only the ordinary terms of the law, but those also of rarer occurrence, those which are chiefly used for the purpose of illustration, and those which exclusively belong to the ancient law and to foreign systems. In both these aspects, its plan will now be more particularly explained.

As a Dictionary, it is devoted to the *definition* of *law terms*, including not only technical terms, or "words of art," properly so called, but also ordinary words which have been used in technical senses, or which have been made the subjects of judicial or legislative construction or definition.

As a Glossary, it is devoted to the translation and explanation of such law terms and phrases as are either partially or entirely obsolete, of terms belonging to foreign systems of law, of ordinary words occurring in old law writers, and of that great variety of entire and fragmentary phrases in various languages, (principally Law Latin and Law French, but occasionally Greek, Saxon, and the modern languages,) which are to be met with in the ancient and modern books: consisting of Law Maxims, quotations from old authors having the force of maxims, occasional lines or couplets in verse, detached portions of sentences, and initial or emphatic words of old writs, statutes and judicial formulæ.

The terms and phrases, thus defined and explained, comprise those of the common, civil, canon, and feudal law, the principal codes of the middle ages, the law of nations.

* *Glossar. in pref.*

the general maritime law of Europe and America, and the ancient and modern municipal law of Scotland, France and Spain, together with such as may be considered peculiar to the jurisprudence of the United States.

I. As a Dictionary, the work, as already observed, is exclusively devoted to *definition*; the matter being arranged in the following order: First, the word to be defined is given in its ordinary form, with such varieties in orthography as have been noticed, and followed by an abbreviation indicative of the language to which it belongs. Next are given, in brackets, the equivalent words, if any, of the old law, which are generally in Law Latin or Law French; and the composition or etymology of the word, according to the best authorities. To this succeeds a notice of the department of law to which the word belongs, briefly expressed; as, "In the civil law," "In English law," "In maritime law," "In criminal law," &c., according to the case; and where a term or proceeding is no longer in use, it is distinguished as being "In old English law," "In old practice," &c. After these preliminary explanations, the definitions follow. These have been either literally extracted, or made up from the best sources within the author's reach, and are illustrated, in most cases, by examples and quotations. Where a term has received various definitions from writers of authority, a selection has generally been made of the one which was deemed the best, but in the case of leading or important words, all the definitions which have been examined are given at length. In a few instances, new definitions are submitted, which are distinguished either by an asterisk at the end, or by the absence of any reference. Where a term has several significations, care has been taken to give all that could be collected, with the proper references; and the same is done where a word has been used in different senses, at different periods of time.

It has sometimes happened that no mere definition, however carefully expressed, would suffice to convey the full meaning of the term or phrase under consideration. In such cases, resort has been had to the aids of what may be called *descriptive definition*, and of illustration by *example*; the utility of which, it is believed, will be apparent. In addition to these, however, illustrations of a still more extended kind have occasionally been subjoined, somewhat on the plan of the "*Diatribæ*" of Spelman; and as these *supplementary notices* constitute one of the peculiarities of the work, the objects and uses of them will now be briefly explained. With a view to greater distinctness, they are separated from the other matter by a very obvious mark, and are chiefly occupied with the following subjects: etymology—history of the introduction of terms and of the changes they have undergone in meaning—and critical observations on the definitions given.

The abuses to which etymology has at times been subjected, have contributed to give that branch of legal philology a much lower place in general estimation than it once enjoyed. Hence the comparatively slight attention paid to it in the modern law dictionaries, as contrasted with the laborious researches of Spelman, Calvin, and other early lexicographers. Its obvious value, however, in throwing light upon the meaning of language, cannot be obscured by any mere mistakes of judgment in its application. The failures of some of the great Roman jurists, as well as of Lord Coke and other eminent common lawyers, in matters of verbal derivation, seem to have arisen partly from a desire to accommodate the etymology of words to what, it was supposed, *ought to be* their meaning, and partly from an *undue extension* of the process of *analysis* itself, simple words being often needlessly, sometimes absurdly, separated into what were imagined to be, or to have been their component parts. Another source of error in etymology seems to have been, the neglect to treat it in a *historical* light. It is not enough to pursue a word back to its remotest literal elements, without reference to its legal use and application as fixed by *time*. The true legal elements of a word often lie at a much lower point in this scale than is generally supposed, and beyond this point there is no advantage, nay, often actual confusion and error, in tracing them. It is easy, for instance, to refer *libel*, (a defamatory publication,) to the Latin *libellus*, (a little book,) its undoubted origin as a *mere word*, but this throws no light on the essential meaning of libel, as a *term of law*. To reach such meaning, we must descend to the lower period when *libellus* was used to express not so much the outward form of the material and the writing, as the object intended by it, and when certain of these *libelli*

had become distinguished, as a class, by an epithet (*famosi*), peculiarly expressive of their character, and which became thereafter inseparably annexed to them. To find the period when the term *libellus famosus* first acquired a settled meaning, is to fix the origin of the modern word *libel*. Indeed, without this reference to time, and its important influence in modifying, changing, and sometimes even reversing the sense of words, the most accurate and unquestionable derivations lose all their value as illustrations of meaning. The significance of the radical ideas of such words as "*adjourn*" and "*assets*," cannot be appreciated without reference to the periods when they first appear to have been used. Mere speculation, in short, is of little value in etymology, unless verified by examples of the *actual use* of words at former periods, and the process, (laborious as it may be,) of tracing words upwards through ancient records and writers, always keeping in view the influences which have been mentioned, seems to be the only accurate means of reaching what may, with any confidence, be pronounced the elements of their composition.

II. As a Glossary, the following work is necessarily devoted, in a great degree, to translation; a large proportion of the phrases explained being taken either from the Latin of the civil law, or the Law Latin and Law French of the old common law. In translating, care has been taken to follow the originals as closely as the English idiom would permit. In many instances, freer translations have been added for the purpose of clearer illustration, but in no case substituted for the others. Whenever it was practicable, phrases of a fragmentary character have been restored to their places, as portions of the clauses or sentences to which they were found to belong, and the entire clauses or sentences have themselves been presented and translated for the purpose of more clearly explaining their use and application.

Law maxims, it will be seen, occupy a prominent place in this department. In the translations of these, particular attention has been paid to accuracy, and errors and misconceptions of other translators have occasionally been pointed out. Short illustrations of their use have generally been given by examples and quotations from eminent writers and judges; and the maxims themselves have been traced, whenever practicable, to their sources in the old common law writers, or in the civil law.

A Glossary of names of places, and another of surnames will be found at the end of the work. These have been taken from the dictionaries of Cowell and Blount, with such corrections as appeared necessary, and with such additions as the limited time of the author would permit.

III. The principal authorities which have been followed or consulted in the preparation of this work are the Interpreter of Cowell and the Glossary of Spelman. Both these, indeed, may be said to constitute its basis; the latter, also, (which it were superfluous to commend,) being generally adopted as a model. The old Law French work entitled "*Termes de la Ley*," and the Dictionaries of Jacob, Tomlins, Whiahaw, Holthouse and Wharton, with the American Dictionary of Bouvier, and the general Dictionaries of Webster and Richardson have also been referred to. A large number of new illustrations and many additional terms and phrases have been obtained from the civil law, and the best sources of English and American jurisprudence, including the well-known treatises of Bracton, Britton, Littleton, Coke, Blackstone, Wooddesson, Chitty, Stephen, Kent and Story, besides the principal common law and equity Reports.

Among the more ancient of the treatises just named, that of Bracton has been quoted with perhaps the greatest frequency. No apology is believed to be necessary for this, considering the important bearing of that great work upon the theory and practice of English jurisprudence ever since it was written. A large proportion of the Latin quotations scattered through the old books, (particularly the Reports and Institutes of Sir Edward Coke,) is taken directly or indirectly from Bracton's treatise, and several important maxims of English and American law, with many technical terms still in use, may be traced to the same source. A peculiar interest, moreover, attaches to this writer, from the circumstance that his is not only the first systematic law treatise of magnitude ever written in England, but was written at a time when the common law itself was in process of formation, and constitutes a principal channel through which many rules of the civil law, accompanied by more or less of its language, were engrafted upon the native jurisprudence.

Frequent reference has also been made to the early contemporary treatise of Britton, chiefly for illustrations of the meaning of terms and phrases in early law French, but occasionally, also, as throwing valuable light upon the sense of passages or single words in Bracton. The works of these two writers, indeed, may be said to represent respectively the Latin and French of the periods at which they were written, and are chiefly relied on as authorities for that purpose. The Latin of later periods has been illustrated by references to the Register, to the principal statutes and treatises composed in that language, and to the old reports and books of practice; the French, by references to the old French statutes, to the Year Books and later reports, and to the treatises of Littleton and other writers. The Norman Dictionary of Kelham has also been consulted, but the barbarous or corrupt forms of most of the terms given in that work, the occurrence of known typographical errors in some cases, and the general absence of reference to authority (which might furnish a ready means of correction) have prevented any very extensive use of its contents. The utility of the last named publication, it may be observed, would have been greatly enhanced, had the words it contains been accompanied in all cases by explicit references to the sources from which they were taken.

The Civil Law has contributed, it will be seen, a considerable proportion of the terms and phrases translated and explained in the course of this work. Most of these have been directly taken from the Institutes, Code, Digests, and Novels of Justinian; and the passages in which they occur have generally been quoted and translated as furnishing the best explanations of their meaning and application. Additional illustrations have been derived from the writings of the civilians: and among these, the elementary works of Heineccius and Mackeldey, and the valuable Analysis of Hallifax have been most frequently referred to. A variety of definitions have also been extracted from the standard lexicons of Calvin, (who is mentioned by Cowell* in terms of peculiar commendation,) Prateus, Spiegelius, Oldendorpius, and others. These civil law terms do not appear to have been hitherto presented, to any extent, in any English law dictionary. A few are to be met with in Cowell, next to none in Spelman, and those which are given in later works are taken rather from the modern civil law, than the original collections of Justinian. From the constant reference made to the latter, however, in all the modern systems, as well as in American jurisprudence, their peculiar terms, as expressed in the original languages, have been thought to be of sufficient general importance to justify the particular attention which has been bestowed upon them. A number of important law maxims have also been quoted from the same sources, which are not to be found in the maxim books now in general use.

Next to the law of England, from which our own has been so extensively derived, that of Scotland is perhaps the most important to an English or American student, considered with reference to the terminology of the science. A marked peculiarity of this law, especially in its older periods, is its close adherence to the Latin in the forms of its technical terms, many of which are essentially Latin, the termination only being slightly varied; e. g. *caution*, *cedent*, *decident*, *decern*, *decreet*, *dispone*, *excambion*, *lucrative*, *successor*, *terce*, *transumpt*, *vitious*, *intromission*, &c. The same law is valuable, also, from having preserved the meaning of several Saxon words and feudal terms which cannot be satisfactorily traced through the English books. These considerations will account for the particular attention paid to Scotch law terms in the following pages.

Throughout the work, it has been deemed an important part of the explanations given, to distinguish as accurately as possible between such terms and phrases as are *still in use*, and those which have become partially or entirely *obsolete*; and the same object has been kept in view in regard to such rules of law and practical proceedings as have been introduced or referred to, in the way of illustration. The proper distinction, in these cases, has been expressed either by the brief preliminary designation of the term, phrase or proceeding, as one "In old law," "In old practice," &c., or by compendiously noticing at the end of the definition or description, the changes by which proceedings have been abolished, laws repealed, or rules or customs abrogated. The Commentaries of Blackstone, in particular, have been compared throughout with

* Interpreter, ed. 1607, pref.

the valuable "New Commentaries" of Mr. Serjeant Stephen, by which they have been more closely accommodated to the present state of the law in England.

In adapting the work to the uses of American readers and students, care has been taken to introduce such matter as appeared to be of the most general and permanent interest and value. To keep accurately in view the terminology applicable to the jurisprudence of each particular State, especially in its dependence on the changes now so frequent and sudden in State legislation, would seem to be scarcely attainable by any degree of attention or industry that could be devoted to the subject. The difficulties attending definition as fixed by local statute law, arising from the entire absence of any common standard, have recently been placed in a strong light by an eminent American judge.* The definitions given in the standard treatises, and in the opinions of the bench, partake of a much greater degree of uniformity, and for this reason they have been more generally quoted and relied on.

With this prefatory notice of its plan and purpose, the work is now submitted to the examination of the profession. That its execution has fallen far short of its design, is already but too apparent to the author's own observation. Of the defects that may be discovered in its pages, some seem to be inseparable from the task of first compiling any matter of the kind from sources so numerous, and scattered over so wide a field. But it is hoped that neither these nor such as may be fairly chargeable to want of judgment, care or information, will be found seriously to impair its general utility, or occasion regret for the time and labor devoted to its composition.

New-York, Dec. 31st, 1850.

* Mr. Justice Catron, in *Nelson v. Carland*, 1 *Howard's R.* 265, 271.

EXPLANATION

OF

ABBREVIATIONS AND MARKS USED IN THIS WORK.

a, b, in the old books, denote the first and second pages of a folio or leaf.	<i>infra</i> , below.
acc. according, accordingly.	Ital. Italian.
antepenult. before the last but one.	l. (<i>lex</i>), law.

ss. sections.
 st. stat. statute.
supra, above.
 Swed. Swedish.
 t. tit. (*titulus* or *titulo*,) title.
 temp. (*tempore*,) in the time.
 Teut. Teutonic, or old German.
 titt. tittt. (*tituli* or *titulis*,) titles.
 tom. (*tome*,) volume.
 tr. tract. (*tractatus*,) tract or treatise.

ub. inf. (*ubi infra*,) in the place below, or next cited.
ub. sup. (*ubi supra*,) where above quoted; in the place or passage last cited.
 ult. (*ultimus*, *ultimo*,) the last.
 vet. (*vetus*,) old.
Vet. Cart. (*vetus carta*,) old deed.
Vet. MS. old manuscript.
 voc. (*voce* or *vocabulo*,) word; in or on the word.
 vocc. (*vocibus* or *vocabulis*,) words; in or on the words.

Brackets, [] are used to distinguish such matter as is added or inserted by the author in definitions and translations, for the purpose of clearer explanation of the meaning; and also such occasional emendations of passages in old authors as seemed to be required by the context. The marginal pages of authorities referred to, are sometimes distinguished in the same manner.

An asterisk, * at the end of a definition, denotes that it is of the author's composition. The same mark prefixed to a reference, denotes that the definition or other matter is not literally quoted, but made up, or substantially extracted from the authorities referred to. The same mark, prefixed to the number of a page, denotes a marginal paging.

A dash, — is used to separate, in the same paragraph, definitions given by different authorities, where the term defined has but one meaning: definitions which express *distinct* meanings, being arranged in distinct paragraphs.

. is used to separate the definitions from the illustrative matter which has been explained in the preface.

Law Maxims are invariably distinguished by the type.

ABBREVIATIONS

OF

REFERENCES, USED IN THIS WORK.

- A. Gell. Noct. Att.* Auli-Gellii Noctes Atticæ.
A. K. Marsh. R. A. K. Marshall's (Kentucky) Reports.
Abb. on Ship. Abbott on Shipping.
Adam's Rom. Ant. Adam's Roman Antiquities.
Ad. on Eject. Adams on Ejectment.
Ad. & Ell. Adolphus and Ellis' Reports.
Ad. & Ell. (N. S.) Adolphus and Ellis' Reports, New Series.
Addams' R. Addams' Reports.
Alabama R. Alabama Reports.
Alia. Crim. Pr. Alison's Criminal Practice.
Am. & Fer. on Fixt. Amos and Ferard on Fixtures.
Am. Lead. Cas. American Leading Cases.
Ambler. Ambler's Reports.
And. Anderson's Reports.
Andrews on Rev. Laws. Andrews on the Revenue Laws of the United States.
Ang. on Carriers. Angell on Carriers.
Ang. and Ames on Corp. Angell and Ames on Corporations.
Ang. on Life & Fire Ins. Angell on Life and Fire Insurance.
Ang. on Tide Waters. Angell on Tide Waters.
Ang. on Limit. Angell on Limitation.
Ang. on Watercourses. Angell on Watercourses.
Anstr. Anstruther's Reports.
Arch. Bankr. Law. Archbold's Bankrupt Law.
Arch. Civ. Pl. Archbold's Civil Pleading.
Arch. Cr. Pl. Archbold's Criminal Pleading.
Arch. Landl. & Ten. Archbold's Landlord and Tenant.
Arch. N. Prius. Archbold's Nisi Prius.
Arch. N. Pract. Archbold's New Practice.
Arch. Pr. Archbold's Practice.
Arkansas R. Arkansas Reports.
Arkley's R. Arkley's (Scotch) Reports.
Arn. on Ins. Arnould on Insurance.
Art. sup. Chart. Articuli super Chartas.
Artic. Cleri. Articuli Cleri.
Atherley on Mar. Sett. Atherley on Marriage Settlements.
Assia. de Jerus. Assises de Jerusalem.
Atk. Atkyn's Reports.
Ayl. Pand. Ayliffe's Pandect.
Ayl. Parerg. Ayliffe's Parergon.
Azuni's Marit. Law. Azuni's Maritime Law.
B. & A. or B. & Ald. Barnewall and Alderson's Reports.
B. & Ad. Barnewall and Adolphus' Reports.
B. & C. Barnewall and Cresswell's Reports.
B. & P. Bosanquet and Puller's Reports.
B. Monroe's R. B. Monroe's (Ky.) Reports.
Bab. on Auct. Babington on Auctions.
Bac. Abr. Bacon's Abridgment.
Bac. Maz. Bacon's Maxims.
Bac. Read. Us. Bacon's Reading on the Statute of Uses.
Bailey's R. Bailey's (S. C.) Reports.
Baldwin's R. Baldwin's Circuit Court Reports.
Barbour's Chanc. Pr. Barbour's Chancery Practice.
Barbour's R. Barbour's (N. Y.) Reports.
Barbour's Ch. R. Barbour's Chancery Reports.
Barr. Obs. Stat. Barrington's Observations on the Statutes.
Bell's App. Cas. Bell's (Scotch) Appeal Cases.
Bell's Com. Bell's Commentaries on the Law of Scotland.
Bell's Dict. Bell's Dictionary of the Law of Scotland.
Benedict's Adm. Pr. Benedict's Admiralty Practice.
Benl. Benloe's Reports.
Benth. Jud. Ev. Bentham's Rationale of Judicial Evidence.
Best on Evid. Best on Evidence.
Best on Pres. Best on Presumptions.
Bibb's R. Bibb's (Ky.) Reports.
Bing. R. Bingham's Reports.
Bing. N. C. Bingham's New Cases.
Binn. or Binney's R. Binney's Reports.
Bl. Com. Blackstone's Commentaries.
Bl. R. Sir W. Blackstone's Reports.

- Blackf. R.* Blackford's (Indiana) Reports.
Blatchford's R. Blatchford's Circuit Court Reports.
Bligh's R. Bligh's Reports (House of Lords).
Blount. Blount's Nomo-lexicon.
Bohun's Cura. Cane. Bohun's Cursus Cancellariæ.
Bohun's Inst. Leg. Bohun's Institutio Legalis.
Boote's Hist. Boote's Historical Treatise of a Suit at Law.
Bos. & Pull. Bosanquet and Puller's Reports.
Bouvier. Bouvier's American Law Dictionary.
Bract. Bracton de Legibus et Consuetudinibus Angliæ.
Bradford's R. Bradford's Surrogate's Reports.
Branch's Pr. Branch's Principia Legis et Æquitas.
Brande. Brande's Dictionary of Science, &c.
Brissonius. Brissonius De Verborum Significatione.
Britt. Britton.
Bro. Abr. Brooke's Abridgment.
Bro. C. C. Brown's Chancery Cases.
Bro. Civ. Law. Browne's Civil and Admiralty Law.
Bro. P. C. Brown's Parliamentary Cases.
Brock R. Brockenborough's Reports.
Brod. & Bing. Broderip & Bingham's Reports.
Broom's Maz. Broom's Legal Maxima.
Browne on Act. Browne on Actions.
Brownl. Brownlow's Reports.
Brownl. & Golds. Brownlow and Goldsborough's Reports.
Brown's R. Brown's (Scotch) Reports.
Bull. N. P. Buller's Nisi Prius.
Bulstr. Bulstrode's Reports.
Burge on Suret. Burge on Suretyship.
Burge Col. & For. Law. Burge on Colonial and Foreign Law.
Burn's Eccl. Law. Burn's Ecclesiastical Law.
hurr. Burrow's Reports.
Burr. Sett. Cas. Burrow's Settlement Cases.
Burr. Assign. Burrill on Assignments.
Burr. Circ. Ev. Burrill on Circumstantial Evidence.
Burr. Law Dict. Burrill's Law Dictionary.
Burr. Pr. Burrill's Practice.
Burton's Real Prop. Burton's Law of Real Property.
Butler's Co. Litt. Butler's Notes to Coke Littleton.
Butler's Hor. Jur. Butler's Horæ Juridicæ.
Bynk. Quant. Jur. Pub. Byunkershoek's Quæstiones Juris Publici.
- C. & F.* Clarke and Finelly's Reports.
C. & J. Crompton and Jervis' Reports.
C. & K. Carrington and Kirwan's Reports.
C. & M. Carrington and Marshman's Reports.
C. & P. Carrington and Payne's Reports.
Caines' R. Caines' (N. Y.) Reports.
Call. on Sew. Callis on Sewers.
Call's R. Call's (Virginia) Reports.
althr Calthrop's Reports.
Calv. Lex. or Ca'v. Lex. Jur. Calvini Lexicon Juridicum.
Calv. on Part. Calvert on Parties to Suits in Equity.
Camd. Brit. Camden's Britannia.
Campb. Campbell's Reports.
Carr. & M. Carrington and Marshman's Reports.
- Cart. de Forest.* Carta de Foresta.
Carth. Carthew's Reports.
Cas. temp. Hardw. Cases tempore Hardwicke.
Cas. temp. Talb. Cases tempore Talbot.
Cassiod. Var. Cassiodori Variarum.
Chan. Cas. Chancery Cases, or Cases in Chancery.
Chanc. Prec. Chancery Precedents.
Chart. Forest. Charta de Foresta.
Chart. Civil. Lond. Charta Civitatis Londini.
Chitt. Arch. Pr. Chitty's Archbold's Practice.
Chitt. on Bills. Chitty on Bills.
Chitt. Bl. Com. Chitty's Blackstone's Commentaries.
Chitt. Com. Law. Chitty's Commercial Law.
Chitt. Contr. Chitty on Contracts.
Chitt. Gen. Pr. Chitty's General Practice.
Chitt. Pl. Chitty on Pleading.
Chitt. R. Chitty's Reports.
Civ. Code Louis. Civil Code of Louisiana.
Clerke's Praz. Cur. Adm. Clerke's Praxis Curie Admiraltatis.
Co. Coke's Reports.
Co. Entr. Coke's Entries.
Co. Litt. Coke on Littleton.
Cod. Codex Justiniani.
Cod. Theodos. Codex Theodosianus.
Code Civ. Code Civil.
Code Nap. Code Napoleon.
Cole on Crim. Inform. Cole on Criminal Informations.
Com. Comyn's Reports.
Com. Dig. Comyn's Digest.
Comb. Comberbach's Reports.
Comstock's R. Comstock's (N. Y.) Reports.
Cond. R. Condensed Reports.
Conf. Chart. Confirmatio Chartarum.
Conkl. Treat. Conkling's Treatise on Jurisdiction.
Conn. R. Connecticut Reports.
Consol. del Mare. Consolato del Mare.
Cooke on Def. Cooke's Law of Defamation.
Cooke's R. Cooke's (Tenn.) Reports.
Coop. Just. Inst. Cooper's Justinian's Institutes.
Coote on Mortg. Coote on Mortgages.
Corp. Jur. Can. Corpus Juris Canonici.
Corp. Jur. Civ. Corpus Juris Civilis.
Coventry on Conv. Evid. Coventry on Conveyancer's Evidence.
Cowell. Cowell's Interpreter.
Cowp. Cowper's Reports.
Cowen's R. Cowen's (N. Y.) Reports.
Crabb's Hist. Crabb's History of English Law.
Crabb's Real Prop. Crabb's Law of Real Property.
Crabbe's R. Crabbe's District Court Reports.
Craig or Crag Jus Feud. Craig's Jus Feudale.
Cranch's R. Cranch's Reports.
Cro. Car. Croke's Reports. (Charles I.)
Cro. El. Croke's Reports. (Elizabeth.)
Cro. Jac. Croke's Reports. (James I.)
Crompt. Jurisd. Crompton's Jurisdiction of Courts.
Crompt. & Mees. Crompton and Meeson's Reports.
Cr. Mees. & Rosc. Crompton, Meeson and Roscoe's Reports.
Cruise's Dig. Cruise's Digest.
Curtis' R. Curtis' Reports.
Curtis' R. Curtis' Circuit Court Reports.
Cushing's R. Cushing's (Mass.) Reports.

D. & Ch. Deacon and Chitty's Reports.
D. & Cl. Dow and Clarke's Reports.
D. & R. Dowling and Ryland's Reports.
Dal. Dalison's Reports.
Dallas' R. Dallas' Reports.
Dalrymple Feud. Dalrymple on Feudal Property.
Dane's Abr. Dane's Abridgment.
Daniell's Chanc. Pr. Daniell's Chancery Practice.
Dav. Davies' R. Davies' Reports.
Day's R. Day's (Conn.) Reports.
Decret. Child. *ad L. Salic.* Decreta Childerti ad Legem Salicam.
Denio's R. Denio's (N. Y.) Reports.
Desaus. R. Desaussure's (S. C.) Reports.
Dev. R. Devereux's (N. C.) Reports.
Dev. & Bat. R. Devereux and Battle's (N. C.) Reports.
Dial. de Scacc. Dialogus de Scaccario.
Dickens' R. Dickens' Reports.
Dig. Digestum or Digesta. The Digest or Digests of Justinian.
Diss. ad Flet. Selden's Dissertatio ad Fletam.
Doct. and Stud. Doctor and Student.
Doct. Plac. Doctrina Placitandi.
Domat. Domat's Civil Law.
Domesd. Domesday Book.
Dougl. Douglas' Reports.
Dowl. & Ryl. Dowling and Ryland's Reports.
Dow's P. C. Dow's Parliamentary Cases.
Dudley's R. Dudley's (S. C.) Reports.
Duer on Ins. Duer on Insurance.
Duer's R. Duer's (N. Y.) Reports.
Dufresne. Dufresne's Glossary.
Dugd. Orig. Jur. Dugdale's Origines Juridicales.
Duke Charit. Us. Duke on Charitable Uses.
Dunkin's Address. Dunkin's Address at the bar of the Legislative Assembly of Canada.
Durand. Spec. Jur. Durandi Speculum Juris.
Dwarr. on Stat. Dwarris on Statutes.
Dyer. Dyer's Reports.

East. East's Reports.
East's P. C. East's Pleas of the Crown.
Eden. Eden's Reports.
Eden's Bankr. Law. Eden on the Bankrupt Law.
Edw. Adm. R. Edwards' Admiralty Reports.
Edw. Ch. R. Edwards' (N. Y.) Chancery Reports.
Edw. on Part. Edwards on Parties.
Edw. on Rec. Edwards on Receivers.
Emerig. Tr. des Ass. Emerigon Traite des Assurances.
Encycl. Am. Encyclopedia Americana.
Eng. Law & Eq. R. English Law and Equity Reports.
English's R. English's (Arkansas) Reports.
Eq. Cas. Abr. Equity Cases Abridged.
Ersk. Inst. Erskine's Institute of the Laws of Scotland.
Ersk. Pr. Erskine's Principles of the Law of Scotland.
Esp. N. P. R. Espinasse's Nisi Prius Reports.
Esprit des Loix. Montesquieu's Spirit of Laws.

F. N. B. Fitzherbert's Natura Brevium.
Fearne Cont. Rem. Fearne on Contingent Remainders.
Fell Merc. Guar. Fell on Mercantile Guaranties.

Fet Ass. Fet Assaver.
Feud. Lib. Feudorum Libri or Liber.
Finch L. Finch's Law.
Fitzg. Fitzgibbon's Reports.
Fitzh. Just. Fitzherbert's Justice.
Fleta. Fleta, seu Commentarius Juris Anglici.
Flor. Wigorn. Florantius Wigornensis, Florence of Worcester.
Fonbl. Eq. Fonblanque on Equity.
Forbes' Inst. Forbes' Institutes of the Law of Scotland.
Formul. Solen. Formulæ Solemnes.
Fortesc. de L. L. Angl. Fortescue de Laudibus Legum Angliæ.
Fost. C. L. Foster's Crown Law.
Foster's R. Foster's (N. H.) Reports.
Francis' Max. Francis' Maxima.
Freem. Freeman's Reports.

Gaius, or Gaius Inst. Gaius' Institutes.
Gale & Dav. Gale and Davison's Reports.
Gale & Whall. Gale and Whalley's Law of Easements.
Gall. or Gallison's R. Gallison's Circuit Court Reports.
Gerv. Dorobern. Gervase of Canterbury.
Gibbon's Rom. Emp. Gibbon's Decline and Fall of the Roman Empire.
Gibb. Cod. Gibson's Codex.
Gilb. C. Pleas. Gilbert's History and Practice of the Court of Common Pleas.
Gilb. For. Rom. Gilbert's Forum Romanum.
Gilb. Ten. Gilbert on Tenures.
Gill's R. Gill's (Md.) Reports.
Gill & Johna. R. Gill and Johnson's (Md.) Reports.
Gilman's R. Gilman's (Ill.) Reports.
Glanv. Glanville, De Legibus et Consuetudinibus Regni Angliæ.
Godb. Godbolt's Reports.
Godolph. Godolphin's Orphan's Legacy.
Golds. Goldsborough's Reports.
Gord. Dig. Gordon's Digest of the Laws of the United States.
Gould's Pl. Gould on Pleading.
Gow on Partn. Gow on Partnership.
Grady on Fixt. Grady on Fixtures.
Grah. Pr. Graham's Practice.
Grand Coust. Norm. Grand Coustumier of Normandy.
Grattan's R. Grattan's (Va.) Reports.
Gray's Chanc. Pr. Gray's Chancery Practice.
Gray's R. Gray's (Mass.) Reports.
Greenl. Cruise's Dig. Greenleaf's Cruise's Digest.
Greenl. on Evid. Greenleaf on Evidence.
Green's R. Green's (N. J.) Reports.
Greg. Turon. Gregory of Tours.
Grot. de Equit. Grotius de Equitate.
Grot. de Jur. Bell. Grotius de Jure Belli ac Pacis.
Guyot Inst. Feod. Guyot's Institutes Feodales.

H. Bl. Henry Blackstone's Reports.
Hagg. Eccl. R. Haggard's Ecclesiastical Reports.
Hale's Anal. Hale's Analysis of the Law.
Hale's Hist. Com. Law. Hale's History of the Common Law.
Hale's P. C. Hale's Pleas of the Crown.
Hallam's Mid. Ag. Hallam's History of the Middle Ages.

- Hallifax Anal.* Hallifax's Analysis of the Roman Civil Law.
Halst. R. Halsted's (N. J.) Reports.
Hamm. N. P. Hammond's Nisi Prius.
Hardr. Hardres' Reports.
Hargr. Co. Litt. Hargrave's Notes to Coke Littleton.
Hargr. L. Tr. Hargrave's Law Tracts.
Hargr. St. Trials. Hargrave's State Trials.
Harper's R. Harper's (S. C.) Reports.
Harr. Dig. Harrison's Digest.
Harr. & Gill's R. Harris and Gill's (Md.) Reports.
Harr. & Johns. R. Harris and Johnson's (Md.) Reports.
Harr. & McH. R. Harris and McHenry's (Md.) Reports.
Hawk. P. C. Hawkins' Pleas of the Crown.
Heath's Max. Heath's Maxims.
Heinec. Elem. Jur. Civ. Heineccii Elementa Juris Civilia.
Heinec. Elem. Jur. Camb. Heineccii Elementa Juris Cambialia.
Hen. & Munf. R. Hening and Munford's (Va.) Reports.
Hengh. Mag. Hengham's Summa Magna.
Het. Hetley's Reports.
Hickes' Thes. Hickes' Thesaurus.
Hill on Trust. Hill on Trustees.
Hilliard's Real Prop. Hilliard's Abridgment of the American Law of Real Property.
Hill's R. Hill's (N. Y.) Reports.
Hill's R. Hill's (S. C.) Reports.
Hinemar. Epist. Hinemari Epistolæ.
Hob. Hobart's Reports.
Hoffm. Mast. in Chanc. Hoffman's Master in Chancery.
Holt's R. Holt's Reports.
Holthouse. Holthouse's Law Dictionary.
Hotom. in Verb. Feud. Hotomannus de Verbis Feudalibus.
Houard's Ang. Sax. Laws. Houard's Anglo Saxon Laws.
How. St. Trials. Howell's State Trials.
Hoved. Ann. Hoveden's Annals.
Howard's R. Howard's Reports (S. C. U. &).
Hub. Præl. Jur. Civ. Huberi Prælectiones Juris Civilis.
Hubback's Ev. of Success. Hubback's Evidence of Succession.
Hughes' Eq. Drafts. Hughes' Equity Draftsman.
Hughes on Ins. Hughes on Insurance.
Hume's Com. Hume's Commentaries on the Criminal Law of Scotland.
Humph. R. Humphrey's (Tenn.) Reports.
Hutt. Hutton's Reports.

Ingulph. Hist. Croyl. Ingulphi Historia Croylandia.
Inst. Institutes of Justinian.
Inst. Institutes of Lord Coke.
Inst. Cler. Instructor Clericalis.
Indiana R. Indiana Reports.
Iredell's Eq. R. Iredell's (N. C.) Equity Reports.
Iredell's Law R. Iredell's (N. C.) Law Reports.

J. J. Marsh. R. J. J. Marshall's (Ky.) Reports.
Jac. & Walk. Jacob and Walker's Reports.
Jac. Sea Laws. Jacobsen's Sea Laws.
Jacob. Jacob's Law Dictionary.
Jarm. on Wills. Jarman on Wills.

Jenk. Cent. Jenkins' Centuries or Reports.
Johns. Cas. Johnson's (N. Y.) Cases.
Johns. Ch. R. Johnson's (N. Y.) Chancery Reports.
Johns. R. Johnson's (N. Y.) Reports.
Jones on Bailm. Jones on Bailment.
Jones' Law R. Jones' (N. C.) Law Reports.
Jones' Eq. R. Jones' (S. C.) Equity Reports.
Jornand. de Reb. Get. Jornandes De Rebus Geticis.
Joy on Conf. Joy on the Admissibility of Confessions.
Joy on Evid. Joy on the Evidence of Accomplices.
Jul. Frontin. Julius Frontinus.

Kames' Eq. Kames' Principles of Equity.
Kaufm. Mackeld. Civ. Law. Kaufmann's edition of Mackeldey's Civil Law.
Keb. Keble's Reports.
Keilw. Keilway's Reports.
Kel. Kelyng's Reports.
Kelham. Kelham's Norman Dictionary.
Kelly's R. Kelly's (Geo.) Reports.
Kennett's Par. Ant. Kennett's Parochial Antiquities.
Kennett's Gloss. Kennett's Glossary.
Kent's Com. Kent's Commentaries.
Kernan's R. Kernan's (N. Y.) Reports.
Kitch. Kitchen of Courts.

L. Alam. Law of the Alemanni.
L. Baiwar. or Boior. Law of the Bavarians.
L. Ripuar. Law of the Ripuarians.
L. Salic. Salic Law.
L. Fr. Dict. Law French Dictionary.
L. Lat. Dict. Law Latin Dictionary.
LL. Aluredi. Laws of Alfred.
LL. Athelst. Laws of Athelstan.
LL. Burgund. Laws of the Burgundians.
LL. Canuti R. Laws of King Canute.
LL. Edw. Conf. Laws of Edward the Confessor.
LL. Gul. Cong. Laws of William the Conqueror.
LL. Hen. I. Laws of Henry I.
LL. Ina. Laws of Ina.
LL. Longob. Laws of the Lombards.
LL. Malcolm. R. Scot. Laws of Malcolm, King of Scotland.
LL. Neapolit. Laws of Naples.
LL. Will. Noth. Laws of William the Bastard.
LL. Wisegothor. Laws of the Visigoths.
Lamb. Archæion. Lambard's Archæionomia.
Lamb. Eiren. Lambard's Eirenarcha.
Lamb. Explic. Lambard's Explication.
Las Part. Las Siete Partidas.
Latch. Latch's Reports.
Ld. Raym. Lord Raymond's Reports.
Lee on Abstr. Lee on Abstracts of Title.
Leon. Leonard's Reports.
Lev. Levin's Reports.
Lewis on Perp. Lewis on Perpetuity.
Lewis' U. S. Crim. Law. Lewis' United States Criminal Law.
Lib. Feud. Libri Feudorum; the Books of Feuds.
See Feud. Lib.
Lib. Nig. Scacc. Liber Niger Scaccarii; Black Book of the Exchequer.
Lib. Rames. Liber Ramesiensis; Book of Ramsey.

- Lib. Rub. Seacc.* Liber Ruber Seaccarli; Red Book of the Exchequer.
Lill. Abr. Lilly's Abridgment.
Litt. Littleton's Tenures.
Litt. R. Littleton's Reports.
Littell's R. Littell's (Ky.) Reports.
Loccen. de Jur. Mar. Loccenius de Jure Maritimo.
Lofft. Lofft's Reports.
Louis. R. Louisiana Reports.
Lutw. Lutwyche's Reports.
Lyndew. Prov. Lyndwode's Provinciales.

M. & G. Manning and Granger's Reports.
M. G. & S. Manning, Granger and Scott's Reports.
M. & K. Mylne and Keen's Reports.
M. & M. Moody and Malkin's Reports.
M. & P. Moore and Payne's Reports.
M. & S. Maule and Selwyn's Reports.
M. & W. Meeson and Welsby's Reports.
McCord's R. McCord's (S. C.) Reports.
McLean's R. McLean's Circuit Court Reports.
Mackeld. Civ. Law. Mackeldey's Civil Law.
Macnal. Ev. Macnally on Evidence.
Macph. on Inf. Macpherson on Infants.
Macq. Hus. & W. Macqueen on Husband and Wife.
Madd. Chan. Maddock's Chancery.
Mad. Form. Angl. Madox' Formulæ Anglicanum.
Mad. Hist. Exch. Madox' History of the Exchequer.
Mag. Chart. or Cart. Magna Charta, or Carta.
Mag. Rot. Pip. Magnus Rotulus Pipæ; Great Roll of the Pipe.
Maine R. Maine Reports.
Man. & Gr. Manning and Granger's Reports.
Man. Gr. & Scott. Manning, Granger & Scott's Reports.
Manwood. Manwood's Forest Law.
Mans. on Dem. Mansel on Demurrer.
Marculf. Form. Marculfi Formulæ.
Marsh. on Ins. Marshall on Insurance.
Martin's (La.) R. Martin's Louisiana Reports.
Marr. Leg. Bibl. Marvin's Legal Bibliography.
Maryland Law R. Maryland Law Reports.
Maryland Ch. R. Maryland Chancery Reports.
Mascard. de Prob. Mascardus de Probationibus.
Mason's R. Mason's (Circuit Court) Reports.
Mass. R. Massachusetts Reports.
Mat. Par. Matthew Paris.
Meeson & W. Meeson and Welsby's Reports.
Menoeh. de Præs. Menochius de Præsumptionibus.
Merivale. Merivale's Reports.
Merl. Repert. Merlin's Repertoire.
Metcalfe's R. Metcalfe's (Mass.) Reports.
Michigan R. Michigan Reports.
Miller's Eq. Mortg. Miller's Law of Equitable Mortgages.
Mirr. Mirror of Justices.
Missouri R. Missouri Reports.
Mitford's Ch. Pl. Mitford's Chancery Pleading.
Mod. Modern Reports.
Molloy de Jur. Mar. Molloy de Jure Maritimo.
Mon. Angl. Monasticon Anglicanum.
Moo. & Malk. Moody and Malkin's Reports.
Moore. J. B. Moore's Reports.
Moore & P. Moore and Payne's Reports.
Moore & S. Moore and Scott's Reports.
Murat. Antig. Med. Ævi. Muratori's Antiquitates Medii Ævi.

Myl. & Cr. Mylne and Craig's Reports.
Myl. & K. Mylne and Keen's Reports.

N. Hamp. R. New-Hampshire Reports.
N. Y. R. L. New-York Revised Laws (ed. 1818.)
N. Y. Rev. St. New-York Revised Statutes.
Nev. & Man. Nevile and Manning's Reports.
Nev. & P. Nevile and Perry's Reports.
New R. New Reports.
Nott & McCord's R. Nott and McCord's (S. C.) Reports.
Nov. Novellæ, Novels.
Nov. Recop. Novissima Recopilacion.
Noy's Max. Noy's Maxima.

O. N. B. or Old Nat. Brev. Old Natura Brevium.
O'Brien's Mil. Law. O'Brien's Military Law.
Ohio R. Ohio Reports.
Ohio St. R. Ohio State Reports.
Onuphr. de Interp. Voc. Eccles. Onuphrius de Interpretatione Vocum Ecclesiæ.
Ord. Mar. Ordonnance de la Marine.
Ought. Oughton's Ordo Judiciorum.
Owen. Owen's Reports.
Owen on Bank. Owen on Bankruptcy.

P. Wms. Peere Williams' Reports.
Paige's R. Paige's (N. Y.) Chancery Reports.
Paine's R. Paine's Circuit Court Reports.
Paley on Ag. Paley on Agency.
Palg. Rise, &c. Palgrave's Rise and Progress of the English Commonwealth.
Palm. Palmer's Reports.
Par. Ant. Parochial Antiquities.
Park on Ins. Park on Insurance.
Parker's Cr. R. Parker's (N. Y.) Criminal Reports.
Para. on Contr. Parsons on Contracts.
Peake's Evid. Peake on Evidence.
Penn. Law Journ. Pennsylvania Law Journal.
Penn. R. Pennsylvania Reports.
Penn. St. R. Pennsylvania State Reports.
Perk. Perkins' Profitable Book.
Pet. Adm. Dec. Peters' Admiralty Decisions.
Peters' R. Peters' Reports (S. C. U. S.)
Phill. Evid. Phillippe on Evidence.
Phill. Ins. Phillips on Insurance.
Phill. Pat. Phillips on Patents.
Phillim. Dom. Phillimore on Domicil.
Pick. R. Pickering's (Mass.) Reports.
Pitcairn's Cr. Trials. Pitcairn's (Scotch) Criminal Trials.
Pitisc. Lex. Pitisci Lexicon.
Pitm. Princ. and Sur. Pitman on Principle and Surety.
Plac. Abbrev. Placitorum Abbreviatio.
Plowd. Plowden's Commentaries and Reports.
Pol. Pollexfen's Reports.
Poph. Popham's Reports.
Porter's R. Porter's (Ala.) Reports.
Poth. Obl. Pothier on Obligation (transl.)
Poth. Contr. Sale. Pothier on the Contract of Sale (transl.)
Pow. on Dev. Powell on Devises.
Prest. Est. Preston on Estates.
Prest. Abstr. Preston on Abstracts of Title.
Prest. Leg. Preston on Legacies.
Pulling Merc. Acc. Pulling on Mercantile Accounts.
Purdon's Dig. Purdon's (Pa.) Digest.

- Q. B.* or *Q. B. R.* Queen's Bench Reports. The same with *Ad. & Ell. N. S.*
Quon. Attach. Quoniam Attachiamenta.
- R. & M.* Russell and Mylne's Reports.
R. & M. C. C. Ryan and Moody's Crown Cases.
R. & R. C. C. Russell and Ryan's Crown Cases.
Rand. R. Randolph's (Va.) Reports.
Ranulph. Centr. Ranulph of Chester.
Rast. Entr. Rastell's Entries.
Rawle Const. Rawle on the Constitution.
Rawle's R. Rawle's (Pa.) Reports.
Reeves' Hist. Eng. Law. Reeves' History of the English Law.
Reg. Brev. Registrum Brevium.
Reg. Jud. Registrum Judiciale.
Reg. Maj. Regiam Majestatem.
Reg. Orig. Registrum Originale.
Rhode Island R. Rhode Island Reports.
Richardson's Eq. R. Richardson's (S. C.) Equity Reports.
Richardson's Law R. Richardson's (S. C.) Law Reports.
Rob. Adm. R. Robinson's Admiralty Reports.
Rob. Charles V. Robertson's History of the Reign of Charles V.
Rob. Fr. Conv. Roberts on Fraudulent Conveyances.
Roc. de Nav. et Nau. Rocens de Navibus et Naulo.
Roll. or Ro. Abr. Rolle's Abridgment.
Roll. R. Rolle's Reports.
Rop. Husb. & W. Roper on Husband and Wife.
Rop. on Leg. Roper on Legacies.
Rosc. Crim. Ev. Roscoe on Criminal Evidence.
Rosc. Real Act. Roscoe on Real Actions.
Rot. Claus. Rotuli Clausi; Close Rolls.
Rot. Parl. Rotuli Parliamenti; Parliament Rolls.
Rot. Pat. Rotuli Patentes; Patent Rolls.
Russ. Russell's Reports.
Russ. & M. Russell and Mylne's Reports.
Russ. on Crim. Russell on Crimes and Misdemeanors.
Russ. on Fact. Russell on Factors.
Russ. & Ry. C. C. Russell and Ryan's Crown Cases.
Ruth. Inst. Rutherford's Institutes.
Ry. & Mo. C. C. Ryan and Moody's Crown Cases.
- S. Car. Rep.* South Carolina Reports.
S. & R. Sergeant and Rawle's (Pa.) Reports.
Salk. Salkeld's Reports.
Sand. Us. & T. Sanders on Uses and Trusts.
Sandf. R. Sandford's (N. Y.) Chancery Reports.
Santerna de Ass. Santerna de Assecurationibus et Sponsionibus Mercatorum.
Saund. Saunders' Reports.
Saund. Pl. & Ev. Saunders on Pleading and Evidence.
Sav. Savile's Reports.
Savig. Hist. Rom. Law. Savigny's History of the Roman Law.
Say. Saver's Reports.
Scammon's R. Scammon's (Ill.) Reports.
Sch. & Lef. Schoales and Lefroy's Reports.
Schmidt's Civ. Law. Schmidt's Civil Law of Spain and Mexico.
Schult. Aq. R. Schultes on Aquatic Rights.
- Scott's R.* Scott's Reports.
Sedgw. on Dam. Sedgwick on the Measure of Damages.
Sedg. on Stat. & Const. Law. Sedgwick on Statutory and Constitutional Law.
Seld. Mare Claus. Selden's Mare Clausum.
Seld. Tit. of Hon. Selden's Titles of Honor.
Selden's R. Selden's (N. Y.) Reports.
Selw. N. P. Selwyn's Nisi Prius.
Serg. & Rawle. Sergeant and Rawle's (Pa.) Reports.
Sewell's Sher. Sewell's Law of Sheriff.
Shelf. Mar. & Div. Shelford on Marriage and Divorce.
Shelf. Mortm. Shelford on Mortmain.
Shep. Touch. Sheppard's Touchstone.
Shepl. R. Shepley's (Maine) Reports.
Show. Shower's Reports.
Sid. Siderfin's Reports.
Sim. & Stu. Simon and Stuart's Reports.
Skene de Verb. Sign. Skene de Verborum Significatione.
Smedes & Marsh. R. Smedes and Marshall's (Miss.) Reports.
Smedes & Marsh. Ch. R. Smedes and Marshall's (Miss.) Chancery Reports.
Smith on Contr. Smith on Contracts.
Smith's Lead. Cas. Smith's Leading Cases.
Smith's Merc. Law. Smith's Mercantile Law.
Sonn. on Gau. Somner's Law of Gavelkind.
Spelman. Spelman's Glossary.
Spence's Chancery. Spence on the Equitable Jurisdiction of the Court of Chancery.
St. Tri. State Trials.
Stair's Inst. Stair's Institutions of the Law of Scotland.
Stark. Ev. Starkie on Evidence.
Stark. Sland. Starkie on Slander.
Stat. Gloc. Statute of Gloucester.
Stat. Marl. Statute of Marlbridge.
Stat. Mert. Statute of Merton.
Stat. Mod. Lev. Fin. Statute Modus Levandi Fines.
Stat. Westm. Statute of Westminster.
Staundf. Pl. Cor. Staundford's Placita Coronæ.
Stephen's Com. Stephen's New Commentaries on the Laws of England.
Steph. Crim. Law. Stephen's Criminal Law.
Steph. Pl. Stephen on Pleading.
Steph. Lect. Stephen's Lectures on the History of France.
Stev. on Av. Stevens on Average.
Stev. & Ben. on Av. Stevens and Benecke on Average.
Stock N. Comp. Ment. Stock on Non Compotes Mentia.
Story on Ag. Story on Agency.
Story on Bailm. Story on Bailment.
Story Conf. Laws. Story on the Conflict of Laws.
Story on Const. Story on the Constitution of the United States.
Story's Eq. Jur. Story's Equity Jurisprudence.
Story's Eq. Pl. Story on Equity Pleading.
Story on Bills. Story on Bills of Exchange.
Story on Notes. Story on Promissory Notes.
Story on Partn. Story on Partnership.
Story's R. Story's Circuit Court Reports.
Str. Strange's Reports.
Straccha de Ass. Straccha de Assecurationibus.

Sty. Styles' Reports.
Sugd. Prop. Sugden's Law of Property.
Sugd. Vend. Sugden on Vendors.
Sumner's R. Sumner's Circuit Court Reports.
Swanst. Swanston's Reports.
Swinb. on Wills. Swinburne on Wills.

T. & G. Tyrwhitt and Granger's Reports.
T. & P. Turner and Phillips' Reports.
T. Jon. Sir Thomas Jones' Reports.
T. R. Term Reports.
T. & R. Turner and Russell's Reports.
T. Raym. Sir Thomas Raymond's Reports.
Tam. on Ev. Tamlyn on Evidence.
Taun. Taunton's Reports.
Taylor's Civ. Law. Taylor's Elements of the Civil Law.
Taylor's Med. Jur. Taylor's Medical Jurisprudence.
Term R. Term Reports.
Texas R. Texas Reports.
Thack. Crim. Cases. Thacher's Criminal Cases.
Thel. Dig. Thelwall's Digest.
Tidd's Pr. Tidd's Practice.
Toll. Ex. Toller's Law of Executors and Administrators.
Tomlins. Tomlins' Law Dictionary.
Tot. Tothill's Reports.
Townsend Pl. Townsend's Preparative to Pleading.
Troubat on Com. & Lim. Part. Troubat on the Law of Commandatary and Limited Partnership.
Trye's Jus Filiz. Trye's Jus Filizarii.
Tucker's Com. Tucker's Commentaries.
Turn. R. Turner's Reports.
Turn. & Phill. Turner and Phillips' Reports.
Turn. & Russ. Turner and Russell's Reports.
Tyrn. Tyrwhitt's Exchequer Reports.
Tyrn. & Gr. Tyrwhitt and Granger's Reports.
Tytler Mil. Law. Tytler on Military Law.

U. S. Dig. United States Digest.

V. & B. Vesey and Beames' Reports.
Vattel. Vattel's Law of Nations.
Vaugh. Vaughan's Reports.
Vent. Ventris' Reports.
Vermont R. Vermont Reports.
Vern. Vernon's Reports.
Ves. Vesey's Reports.
Ves. Jr. Vesey, Junior's, Reports.
Ves. & Bea. Vesey and Beames' Reports.
Vet. Na. Br. Old Natura Brevium.
Vin. Abr. Viner's Abridgment.
Vinn. ad Inst. Vinnius' Commentary on the Institutes of Justinian.

W. Jon. Sir William Jones' Reports.
Ward on Leg. Ward on Legacies.
Ware's R. Ware's District Court Reports.
Wash. C. C. R. Washington's Circuit Court Reports.
Wash. (Va.) R. Washington's (Virginia) Reports.

Watk. Conv. Watkins on Conveyancing.
Wats. Abr. Watson on Arbitration.
Watts' R. Watts' (Pa.) Reports.
Watts & Serg. Watts and Sergeant's (Pa.) Reports.
Welsb. H. & Gord. Welsby, Hurlstone and Gordon's Reports.
Wendell's R. Wendell's (N. Y.) Reports.
Wentw. Off. Ex. Wentworth's Office of Executor.
Wentw. Pl. Wentworth's Pleading.
West's Symb. West's Symboleography.
Whart. Am. Crim. Law. Wharton's American Criminal Law.
Whart. Lex. Wharton's Law Lexicon.
Whart. Proc. of Indict. Wharton's Precedents of Indictments.
Whart. R. Wharton's (Pa.) Reports.
Whart. & Stille's Med. Jur. Wharton and Stille's Medical Jurisprudence.
Wheaton's R. Wheaton's Reports. (S. C. U. S.)
Wheat. on Cap. Wheaton on Captures.
Wheat. Intern. Law. Wheaton's International Law.
Wheat. Law of Nat. Wheaton's History of the Law of Nations.
Whishaw. Whishaw's Law Dictionary.
White's Eq. Cas. White's Leading Cases in Equity.
White's New Recop. White's New Recopilacion of the Laws of Spain and the Indies.
Wilc. on Cons. Wilcock on the Office of Constable.
Wilc. Mun. Cor. Wilcock on Municipal Corporations.
Wilkin. Leg. Ang. Sax. Wilkin's Leges Anglo-Saxonice.
Willes' R. Willes' Reports.
Williams' Exec. Williams on Executors.
Wills' Circ. Ev. Wills on Circumstantial Evidence.
Wils. Wilson's Reports.
Wing. Max. Wingate's Maxims.
Woodb. & Min. R. Woodbury and Minot's Circuit Court Reports.
Wood's Inst. Wood's Institutes.
Wooddes. Lect. Wooddesson's Lectures.
Wordsw. J. Stock Co. Wordsworth on Joint Stock Companies.
Worth. on Jur. Worthington on Juries.
Wright Ten. Wright on Tenures.
Wyatt's Prac. Reg. Wyatt's Practical Register.

Yearb. Yearbook.
Y. & C. Younge and Collyer's Exchequer Reports.
Y. & J. Younge and Jervis' Exchequer Reports.
Yelv. Yelverton's Reports.
Yerger's R. Yerger's (Tenn.) Reports.

Zabriskie's R. Zabriskie's (N. J.) Reports.
Zasius de Feud. Zasius de Feudis.

A •

LAW DICTIONARY

AND

GLOSSARY.

A

A. Lat. The letter marked on the ballots by which, among the Romans, the people voted against a proposed law. It was the initial letter of the word *ANTIQUO*, I am for the old law. *Taylor's Civil Law*, 191.

A. Lat. The letter inscribed on the ballots by which, among the Romans, jurors voted to acquit an accused party. It was the initial letter of *ABSOLVO*, I acquit. *Tayl. Civ. Law*, 192.

A. Lat. From. *A datû*; from the date. 2 *Salk.* 413.

By. *A non judice*; by one not a judge. *Bract.* fol. 205 a.

On, at. *A latere*; on the side, collaterally. *Id.* fol. 62 b.

Of, in. See *A consiliis*.

Used also, anciently, in the composition of official titles; as *à cancellis*, *à consiliis*, *à libellis*, *à responsis*, (qq. v.) in the sense of relation, position, charge, or duty.

A. L. Fr. Of. *A fine force*; of necessity. *Litt.* sect. 455.

At. *A la requeste des prelates, counts et barons, a son parlement a Westm. &c.*; at the request of the prelates, earls and barons, at his parliament at Westminster. *Stat. Articuli sup. Chartas*, pr.

To. *A tout la commune Dengleterre*; to all the people of England. *Id.* c. 1.

For. *A tous jours*; for ever. *Litt.* sect. 625.

In. *Nul common plee ne soit desormes tenu a leschequer*; no common plea (action)

shall henceforth be held in the exchequer. *Art. sup. Chart.* c. 4.

With. *A force et armes*; with force and arms. *Yearbook*, H 3 Edw. III. 7. T. 5 Edw. III. 23.

A AVER ET TENER. *L. Fr.* [*L. Lat. habendum et tenendum.*] To have and to hold. *Litt.* sect. 523, 524. *A aver et tener a luy et a ses heires, a tous jours*; to have and to hold to him and his heirs for ever. *Id.* sect. 625. See *Aver et tener*.

A CANCELLIS. *L. Lat.* A chancellor; anciently so called from the *cancelli*, (lattices, or latticed enclosure,) within which he performed his office. *Cassiodorus Variar.* lib. 11. form 6. *Spelman*, voc. *Cancellarius*. See *Cancellarius*.

A CE. *L. Fr.* For this purpose. *Kelham.* *A causa de cy*; for this reason. *Id.*

A COMMUNI OBSERVANTIA NON EST RECEDENDUM. From common observance there should be no departure; there must be no departure from common usage. 2 *Co.* 74. *Co. Litt.* 186 a. 229 b. 365 a. *Wingate's Maxims*, 752, max. 203. A maxim applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. *Id.* 752-755. Lord Coke applies it to common professional opinion. *Co. Litt.* 186 a. 364 b. See *Communis opinio*.

A CONFECTONE. *L. Lat.* From the making. 5 *Co.* 1. 1 *Ld. Raym.* 480. See *Confectio*.

A CONSILIIS. *Lat.* A counsellor; one

who is *of*, or in another's *counsels*; one whose office is to give counsel. A term formerly applied, in ecclesiastical law, to an advocate or *responsalis*, who gave answers or counsel, on being consulted for that purpose. *Spelman*, voc. *Apocriarius*. The common professional phrase, "*of counsel*," (q. v.) seems to be derived from this source. See *De consilio*.

A DATU. L. Lat. From the date. 2 *Salk.* 418. *A die datûs*; from the day of the date. *Id. ibid.* 2 *Crabb's Real Property*, 248, § 1301. 1 *Ld. Raym.* 84, 480. 2 *Id.* 1242. *A dato*; from the date. *Cro. Jac.* 135. See *Datus, Datum, Date*.

A digniori fieri debet denominatio. Denomination ought to be from the more worthy. The description [of a place] should be taken from the more worthy subject, [as from a vill.] *Fleta*, lib. 4, c. 10, § 12. *Denominatio est a digniore*. *Bacon's Works*, iv. 261. A digniori fieri debet denominatio et resolutio. The title and exposition of a thing ought to be derived from, or given, or made with reference to the more worthy degree, quality, or species of it. *Wingate's Maxims*, 265, max. 75. Thus, if father and son are of one name, viz. J. S., if J. S. be named generally in a writ, count or other record, this shall be intended of the father, for he is the more worthy. *Id.* pl. 4.

A DROIT. L. Fr. To right; to do right; to answer in law. *Qu'il i ait à droit en la curt*; that he will have him to answer the charge in the court. *LL. Gul. Cong.* 6. The same with the L. Lat. *ad rectum*, (q. v.)

A FINE FORCE. L. Fr. Of necessity; of pure necessity. *Litt. sect.* 455. See *Fine force*.

A FORCE. L. Fr. Of necessity. *Britt.* c. 119.

A FOY. L. Fr. [L. Lat. *ad fidem*, q. v.] In or under allegiance. *A lour foy*; in their allegiance. *Yearbook*, P. 8 Edw. III. 6.

A ISSUE. L. Fr. At issue. *Yearb.* M. 3 Hen. VI. 9. *Bendl.* pl. 21.

A LARGE. L. Fr. At large. *Litt. sect.* 366, 367. *Dyer*, 41, (Fr. ed.)

A LATERE. Lat. [L. Fr. *de costé*.] From the side; on, or at the side; collaterally. A term used in the old law of descent, to denote collateral, as distinguished from lineal succession: lineal heirs being in the direct or right line,

ascending or descending, and collateral heirs on the side of it. *Hæredes à latere venientes*; heirs coming from the side; succeeding collaterally; collateral heirs. *Bract.* fol. 20 b. *A latere ascendit [jus]*; collaterally, the right ascends. *Id.* fol. 62 b. Used in the civil law, and by Bracton, as the synonyme of *ex transverso*, (Gr. *ἐκ πλάτους*) across; the lines denoting collateral succession being represented as crossing the main, or right line, or proceeding obliquely from it. *Inst.* 3. 6. pr. *Id.* 3. 8. 3. *Dig.* 38. 10. 1. pr. *Nov.* 118, c. 3. *Bract.* fol. 67 a. See *Linea recta*. Applied, also, to a process or proceeding. *Keilw.* 159.

Out of the regular or lawful course; incidentally, or casually. Applied to the acts of strangers, or persons having no legal interest. *Esto quod—venerit aliquis à latere, et procuratorem ejecerit*; suppose that some person came casually, and ejected the proctor. *Bract.* fol. 42 b. *Fleta*, lib. 3, c. 15, § 13. *Confirmatio à latere facta*; a confirmation made by one having no legal interest, (*à non domino*.) *Bract.* fol. 58 a.

On, or at the side of a person.—*A latere*, in this sense, denotes closeness or intimacy of connexion; a position of favor or distinction. The justices of the ancient court of *Aula Regis* are described as sitting at the king's side; (*à latere regis residentes*.) *Bract.* fol. 108 a. 2 *Reeves' Hist. Eng. Law*, 250.

From the side; from the person. A term denoting directness or fulness of authority. *Fleta* describes one of the ancient English courts as held before auditors, *specialiter à latere regis destinatis*. *Fleta*, lib. 2, c. 2, § 4. Papal ambassadors, possessing the highest degree of authority and confidence, are styled legates *à latere*. 4 *Bl. Com.* 106. See *Legate*.

A LIBELLIS. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. *Calvin's Lex. Jurid.* A name sometimes given to a chancellor, (*cancellarius*), in the early history of that office. *Spelman*, voc. *Cancellarius*.

A MANIBUS. L. Lat. An officer who wrote for the emperor; whose hand (*manus*) was used for writing; an amanuensis. *Calv. Lex.*

A ME. Lat. From me. A term in feudal grants, expressing that the tenant

held directly from the chief lord, as distinguished from *de me*, (q. v.) 2 *Bell's* (Scotch) *Appeal Cases*, 133.

A MENSA ET THORO. Lat. From table and bed; from bed and board, as the phrase is commonly translated. Used as descriptive of one of the kinds of divorce. 1 *Bl. Com.* 440, 441. See *Divorce*.

A NATIVITATE. Lat. From birth. *Reg. Orig.* 266 b. 3 *Bl. Com.* 332.

A non posse ad non esse sequitur argumentum necessario negative. From impossibility to non-existence, the inference follows necessarily in the negative. That which cannot be done is not done. *Hob.* 336 b. Otherwise in the affirmative. *Id. ibid.*

A OES. L. Fr. [L. Lat. *ad opus*.] To the use. *LL. Gul. Cong.* 3.

A ORE. L. Fr. At present; now. *Retornable a ore*; returnable immediately. *Yearb. M.* 8 Edw. III. 30.

For the present; for this time. *Id.* 29.

A PAIS. L. Fr. At or to the country; at issue. *Et sur ceo ils fueront a pais*; and upon this they were at issue. *Yearb. M.* 5 Edw. III. 131.

A PALATIO. Lat. From *palatium*, (a palace.) Counties palatine are hence so called. 1 *Bl. Com.* 117. See *Palatium*.

A PERTE. L. Fr. To lose. *A perte e a gayne*; to lose and to gain. *Fet. Ass.* § 64.

A piratis et latronibus capta dominium non mutant. Things taken or captured by pirates and robbers do not change their ownership. *Bynk. Quæst. Jur. Pub.* b. 1, c. 17. 1 *Ken's Com.* 108, 184. No right to the spoil vests in the piratical captors; no right is derivable from them to any recaptors in prejudice of the original owners. 2 *Wooddes. Lect.* 258, 259.

A piratis aut latronibus capti liberi permanent. Persons taken by pirates or robbers remain free. *Dig.* 49. 15. 19. 2. *Grotius de Jure Belli*, lib. 3, c. 3, s. 1.

A PRENDRE. L. Fr. To take. *Bref à prendre la terre*; a writ to take the land. *Fet. Ass.* § 51. A right to take something out of the soil of another is a profit *à prendre*, or a right coupled with a profit. 1 *Crabb's Real Prop.* 125, § 115. Distinguished from an easement. 5 *Ad. & Ell.* 758. Sometimes written as one word, *apprendre*, *apprender*. 8 *Co.* 126, 127.

A claim of right to angle and to catch and carry away the fish, is a profit *à prendre*, and cannot be claimed by custom.

30 *Eng. Law & Eq. R.* 189. But a right claimed by the inhabitants of a township to enter upon the land of a private person and take water from a well therein for domestic purposes, is an easement, and not a profit *à prendre*, and may therefore properly be claimed by custom. 30 *Eng. Law & Eq. R.* 187.

A QUA. Lat. From which. See *A quo*.

A QUO. Lat. From which. A term used, with the correlative *ad quem*, (to which,) in expressing the computation of time, and also of distance in space. Thus, *dies à quo*, the day from which, and *dies ad quem*, the day to which a period of time is computed. See *Dies à quo, From*. So, *terminus à quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned. See *Terminus, From*.

From which; from whom. A term applied to courts, as expressive of their relation one to another. Thus, a court or judge *à quo* is one from which an appeal is taken, (the court below,) and a court *ad quem* is one to which an appeal is taken, (the court above.) This use of the term is common in the civil and canon law. 4 *Reeves' Hist. Eng. Law*, 33. *Halifax Anal.* b. 3, c. 11, n. 34. *Dig.* 49. 3. 6 *Martin's (Ld.) Rep.* 520. A *qua* is more grammatically proper in connexion with the word *court*, (*curia à qua*.)

Applied, also, to the courts of sovereigns. "The king *à quo*, and the king *ad quem* an ambassador is sent." 10 *Mod.* 4, arg.

A RENDRE. L. Fr. To render, to yield. Profits *à rendre* comprise rents and services. *Hammond's N. Prius*, 192. (Am. ed.)

A rescriptis valet argumentum. An argument drawn from original writs in the Register is good. *Co. Litt.* 11 a. See *Rescripta, Registrum Brevium*.

A RESPONSIS. L. Lat. In ecclesiastical law. One whose office it was to give or convey answers; otherwise termed *responsalis*, and *apocrisiarius*. One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed *à consiliis*. *Spelman*, voc. *Apocrisiarius*.

A RETRO. L. Lat. Behind; in arrear. *Et redditus proveniens inde à retro fuerit*; and the rent issuing therefrom be in arrear. *Fleta*, lib. 2, c. 55, § 2. *Qua*

ei à retro sunt; which are in arrear to him. *Id.* c. 62, § 14. See *Aretro*.

A RUBRO AD NIGRUM. Lat. From the red to the black; from the rubric or title of a statute, (which, anciently, was in red letters,) to its body, which was in the ordinary black. *Bell's Dict.* voc. *Rubric*.

A SECRETIS. L. Lat. An officer who committed to writing or signed orders made in secret council; an officer entrusted with private matters or secrets of state; a secretary. *Calv. Lex. Spelman*, voc. *Cancellarius*. A name anciently given to a chancellor, (*cancellarius*.) *Hincmar. Epist.* 3, c. 16.

A summo remedio ad inferiorem actionem non habetur regressus, neque auxilium. From [after using] the highest remedy, there can be no recourse [going back] to an inferior action, nor assistance [derived from it.] *Fleta*, lib. 6, c. 1, § 2. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. *Bract. fol.* 104 a. 112 b. 3 *Bl. Com.* 193, 194.

A TEMPORE. Lat. From time. *A tempore cujus contrarii memoria non existit*; from time of which there exists not memory to the contrary; time out of mind. *Reg. Orig.* 46 a. The proper words for setting forth a prescription. 1 *Leon.* 273.

A TERME. L. Fr. For a term. *A terme de sa vie*; for the term of his life. *Yearbook*, T. 1 Edw. II. 16. M. 3 Edw. II. 55, 57. *A terme que passe est*; for a term which is passed. M. 4 Edw. III. 59.

A TORT. L. Fr. Of, or by wrong; wrongfully. *De ses avers à tort pris*; of this beasts wrongfully taken. *Yearb.* M. 3 Hen. VI. 20.

A UN. L. Fr. At one; of one mind; agreed. *Nous sumus à un de la tenaunce*; we are at one respecting the tenancy. *Yearb.* P. 1 Edw. II. 5. T. 7 Edw. II. 240.

A verbis legis non est recedendum. From the words of the law there must be no departure. 5 Co. 119. *Wingate's Max.* 25. A court is not at liberty to disregard the express letter of a statute, in favor of a supposed intention. 1 *Steph. Com.* 71. *Broom's Max.* 268, [480.]

A VEYER. L. Fr. To be seen; to be observed or considered. *Dyer*, 22 b. 71.

(Fr. ed.) *Ore est à veyer*; now it is to be seen. *Keilw.* 2 b.

A VINCULO MATRIMONII. L. Lat. From the bond of marriage. 1 *Bl. Com.* 440. 2 *Kent's Com.* 95. See *Divorce*.

AB. Lat. From, by, of. See A. At, in. See *Ab initio*.

Used in the composition of official titles, as *ab actis*, *ab epistolis*, (qq. v.) See A.

AB ACTIS. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes; an officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. *Calv. Lex.* See *Acta*. This, and the similarly formed epithets *à cancellis*, *à secretis*, *à libellis*, were also anciently the titles of a chancellor, (*cancellarius*.) in the early history of that office. *Spelman*, voc. *Cancellarius*.

AB ANTE. Lat. In advance. Story, J. 1 *Sumner's R.* 308.

AB ANTECEDENTI. Lat. Beforehand. Lord Ellenborough, C. J. 5 *M. & S.* 110.

AB ANTIQUO. Lat. Of old, anciently. *Magna Charta*, 9 Hen. III. c. 15. *Bract. fol.* 76 a. 3 *Bl. Com.* 95.

AB ARDENDO. Lat. From *ardendo*; from burning. 4 *Bl. Com.* 220. See *Arson*.

Ab assuetis non fit injuria. From things to which one is accustomed, (or in which there has been long acquiescence,) no injury arises. *Jenk. Cent. Intro.* viii. If a person neglect to insist on his right, he is deemed to have abandoned it. *Ambl.* 645. 3 *Bro. C. C.* 639. See *Laches*.

AB EPISTOLIS. Lat. An officer having charge of the correspondence (*epistolæ*) of his superior or sovereign; a secretary. *Calv. Lex. Spiegelius*.

AB EXTRA. L. Lat. From without. 3 *Rob. Adm. R.* 322.

AB INCONVENIENTI. Lat. From what is inconvenient; from inconvenience. See *Argumentum ab inconvenienti*, &c.

AB INDE. L. Lat. From thence. *Towns. Pl.* 22. Applied to place only. *Id. ibid.*

AB INITIO. Lat. From the beginning; from the first act. A party is said to be a trespasser *ab initio*, an estate to be good *ab initio*, an agreement or deed to be void *ab initio*, a marriage to be unlawful *ab initio*, and the like. *Plowd.* 6 a. 16 a. 1 *Bl. Com.* 440.—The word *ab*, in this sense,

is expressive not only of a point or period of time, but of continuity from that to a subsequent time, without change. Thus, to say a deed or marriage is void *ab initio*, is as much as to say, it was void when made, and has never been otherwise. See *Trespasser ab initio*.

At the beginning; at first; originally. *Ab* here has the sense of *in*, as denoting merely a separate period of time, without any necessary continuity to a subsequent time; or rather, it is used in connections denoting actual contrast or change. *Fleta*, lib. 3, c. 9, § 21. Thus, it is said a gift or conveyance may be valid at the beginning, (*ab initio*,) that is, when first made, and become invalid by a subsequent act, (*ex post facto*,) and *converso*. *Bract*. fol. 11 b. 51 a. 171 a. 336 b. 2 *Bl. Com.* 308. And see *Fleta*, lib. 4, c. 26, § 4. *In initio* is used in the same sense. *Bract*. fol. 18 a. 58 a. So, *ab initio*, in *principio donationis*; at the beginning, at the commencement of the gift. *Id.* fol. 17 b. So, *ab initio*, *sive post tempus*; at the beginning, or afterwards: *ab initio*, *vel ex post facto*; at the beginning, or by a subsequent act. *Id.* fol. 213 a. *Fleta*, lib. 4, c. 17, § 1. The phrase has the same sense in the civil law. *Inst.* 2. 17. 6. *Id.* 4. 1. 16. *Dig.* 30. 41. 2. And in the law maxim, *Quod ab initio non valet tractu temporis non convalescet*; that which is originally void shall not acquire validity by lapse of time. See *Convalescere*. It is constantly used in the civil law and by Bracton, in contrast with the phrase *ex post facto*, (q. v.) And see *Perkins*, ch. 3, s. 191.

AB INITIO MUNDI. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem*; from the beginning of the world to this day. *Yearb. M.* 1 Edw. III. 24. Formal words in old releases. The equivalent English words are still retained in the modern forms.

AB INTESTATO. Lat. [Gr. ἀβιντεστατός.] In the civil law. From an intestate; from the intestate; in case of intestacy. *Hæreditas* *ab intestato*; an inheritance derived from an intestate. *Inst.* 2. 9. 7. *Successio* *ab intestato*; succession to an intestate, or in case of intestacy. *Id.* 3. 2. 3. *Dig.* 38. 6. 1. This answers to the descent or inheritance of real estate at common law. 2 *Bl. Com.* 490, 516. *Story's Conflict of Laws*, § 480. "Heir *ab intestato*." 1 *Burr.* 420. The phrase *ab intestato* is generally used as the opposite or

alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel ab intestato* [*hæreditates*] *pertinent*; inheritances are derived either from a will, or from an intestate, (one who dies without will.) *Inst.* 2. 9. 7. *Id.* 3. 10. 3. *Dig.* 29. 4. *Cod.* 6. 14. 2. See *Ex testamento, Intestatus*.

AB INVITO. Lat. By or from an unwilling party. A transfer *ab invito* is a compulsory transfer. See *In invitum*.

AB OLIM. L. Lat. Of old. 3 *Bl. Com.* 96.

ABACTOR. Lat. [from *abigere*, to drive away.] In the Roman law. A driver away of cattle and other animals; one who drove away cattle from the herd, or smaller animals in numbers, with the intention of stealing them; a cattle stealer. *Cowell. Blount. 3 Gibbon's Rom. Emp.* ch. 44, (Am. ed.) 185, note. More commonly called *abigeus*, (q. v.)

ABACTORES. Lat. Cattle stealers. Plural of *abactor*, (q. v.) *Paulus Sentent.* l. 5, tit. 20. *Calv. Lex. Brissonius*, voc. *Abigei*.

ABALIENARE. Lat. [from *ab*, from, and *alienare*, to alienate or transfer.] In the Roman law. To transfer to another; to make that which is ours, another's; to transfer wholly, or without reserve. *Calv. Lex.* This word occurs in the Digests. *Dig.* 10. 3. 14. 1. *Dig.* 32. 38. 7.

ABALIENATIO. Lat. [from *abalienare*, q. v.] In the Roman law. The transfer, conveyance, or alienation of property from one person to another. This compound term occurs frequently in classical writers, and was peculiar to the citizens of Rome, denoting the perfect transfer of a thing. *Calv. Lex.* It gave place to the simple *alienatio*, which is the term used in the Digests and Institutes, as well as in the feudal law, and from which the English *alienation* has been formed. *Inst.* 2. 8. pr. *Id.* 2. 1. 40. *Dig.* 50. 16. 28. *Feud. Lib.* 1, tit. 13, lib. 2, tit. 9. See *Alienatio*.

ABAMITA. Lat. In the civil law. A great great grandfather's sister, (*abavi soror*.) *Inst.* 3. 6. 4. *Dig.* 38. 10. 3. Called *amita maxima*. *Id.* 33. 10. 17. Called in Bracton, *abamita magna*. *Bract.* fol. 68 b. The edition of 1569 has *abavita*.

ABANDON. To relinquish or surrender a right or property to another.

To give up a thing absolutely, without reference to any particular person or purpose.

To forsake or desert a person. See *Abandonment*.

ABANDONEE. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes. Lord Ellenborough, *C. J. 5 M. & S. 82.* Abbott, *J. Id. 87.* Holroyd, *J. Id. 89.*

ABANDONMENT. [Lat. *cessio, derelictio, destitutio.*] The relinquishment, cession, or surrender of a right, or of property, by one person to, or for another. See *Cession*.

The giving up a thing absolutely, without reference to any particular person or purpose; as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; desertion, or dereliction. 2 *Bl. Com.* 9, 10. See *Dereliction*.

The voluntary leaving of a person to whom one is bound by a particular relation; as a wife, husband, or child. See *Malicious Abandonment*.

ABANDONMENT. [Fr. *délaissement, abandon.*] In marine insurance. A relinquishment, or cession of property by the owner to the insurer of it, in order to claim as for a total loss, when in fact it is so by construction only. 2 *Steph. Com.* 178.—The exercise of a right which a party having insured goods or vessels has to call up the insurers, in cases where the property insured has, by perils of the sea, become so much damaged as to be of little value, to accept of what is, or may be saved, and to pay the full amount of the insurance, as if a total loss had actually happened. *Park on Ins.* 143. 2 *Marshall on Ins.* 559. 3 *Ken's Com.* 318—335, and notes. Its effect is to transfer to the underwriter only that interest of the insured which is covered by the policy. 2 *Arnould on Ins.* 1159. 6 *Ohio State R.* 200. Abandonment may be made either by a formal instrument called a deed of cession; or, which is more usual, by letter, no particular form being necessary. 6 *Cranch R.* 268. 1 *Wash. C. C. R.* 400, 530. See 18 *Pick. R.* 83. *Peters' Digest*, Abandonment, Insurance.

ABANDONMENT. [Lat. *cessio.*] In French law. The act by which a debtor surrenders his property for the benefit of his creditors. *Merlin Repert.* Abandonment.

ABARNARE. L. Lat. [from Sax. *abarrian*, to uncover, disclose, or make bare.] In old English law. To detect, discover, or disclose any secret crime. *LL. Hen. I.*

c. 91. *Cowell. Abarnatus*; discovered, detected. *LL. Canuti*, c. 104. *Cowell.*

ABATAMENTUM. L. Lat. [from *abatere*, q. v.] In old English law. An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor, and the entry of the heir. *Co. Litt.* 277 a. *Yelv.* 151. See *Abatement of freehold*.

ABATARE. L. Lat. [from Fr. *abater*, q. v.] In old English law. To abate. *Abatarii*; she abated. *Yelv.* 151. See *Abate*.

ABATE. [from Fr. *abater, abatere*, to beat, or throw down; L. Lat. *abatere*.] To beat, break, pull or throw down; to overthrow, demolish, or destroy a material object, as a house, castle, sheep-fold, &c. See *Abater*. This original meaning of the word is still preserved in modern law, in its application to nuisances. To abate a nuisance is to remove it, by pulling, cutting, or breaking it down, or otherwise destroying it. 3 *Bl. Com.* 168.

To overthrow, destroy or defeat a right, or a judicial proceeding. To abate a freehold, is to overthrow it by the intervention of a stranger. 3 *Bl. Com.* 168. See *Abatement of freehold*. To abate a writ or action, is to defeat, overthrow, prostrate, (*prosternere*,) quash, (*cassare*,) or put an end to it by some fatal exception. 3 *Bl. Com. ub. sup. Co. Litt.* 134 b. *Steph. Plead.* 47. See *Abatement in pleading*.

To be reduced, or diminished, (lowered or brought down;) as the claim of a legatee, or creditor. 2 *Fonbl. Equity*, 369. See *Abatement among legatees*.

To cease, terminate, or come to an end prematurely, as a suit, or other judicial proceeding; (to drop or fall; L. Lat. *cadere*.) 2 *Archb. Pract.* 299. 6 *Wheaton's R.* 260. See *Abatement in practice, Cadere*.

ABATEMENT. [L. Lat. *abatamentum*.] The act of abating; the state of being abated. See *Abate*; and *infra*.

ABATEMENT OF A NUISANCE. The taking away of a nuisance by pulling, cutting, or breaking it down, or otherwise removing or destroying it.* The remedy which the law allows a party injured by a nuisance, of destroying or removing it by his own act, so as he commits no riot in doing it, nor occasions (in the case of a private nuisance,) any damage beyond what the removal of the inconvenience necessarily requires. 3 *Bl. Com.* 5, 168. 3 *Steph. Com.* 361. 2 *Salk.* 458. 1 *Chitt. Gen.*

Pract. 647—656. 2 *Crabb's Real Prop.* 1078, § 2475.

ABATEMENT OF FREEHOLD. [L. Lat. *abatamentum*.] The overthrow of a freehold by the unlawful entry of a stranger, where the possession is vacant. The act of a stranger in entering upon lands, after the death of the ancestor, or person last seised, and before the entry of the heir, devisee, or person next entitled, and keeping the latter out of possession. *Co. Litt.* 277 a. 3 *Bl. Com.* 168. 3 *Steph. Com.* 482. 2 *Crabb's Real Prop.* 1063, § 2454 b. A species of ouster of the freehold, the technical peculiarity of which consists in its being effected by *intervention*, that is, by stepping in, or interposing between the ancestor and heir. Hence called in the books an *entry by interposition*. *Co. Litt.* 277 a.

ABATEMENT AMONG LEGATEES. [L. Lat. *defalcatio*.] The proportionate reduction, or diminution which legatees are subject to have made in the pecuniary legacies bequeathed to them, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. 2 *Fonbl. Equity*, 369. *Ward on Legacies*, 369, ch. vi. sec. vii. 1 *Story's Equity Jurispr.* § 555. *Bract.* fol. 61 a. 2 *Bl. Com.* 512, 513.

ABATEMENT IN PLEADING. [L. Lat. *cassatio*.] The defeating, overthrowing, prostration, quashing, or putting an end, for the present, to a writ or action, by some matter of fact pleaded by a defendant; the plea itself being termed a plea in *abatement*. *Co. Litt.* 134 b. 277 a. 3 *Bl. Com.* 168. *Steph. Pl.* 47, Appendix, Note (22). See *Plea in abatement*.

ABATEMENT IN PRACTICE. The cessation or determination, (falling, or dropping) of a *suit*, or the suspension of all proceedings in it, from the want of proper parties capable of proceeding therein; as in consequence of the death of one of the parties during its pendency. 2 *Archb. Pr.* 299. 2 *Tidd's Pract.* 932. *Story's Eq. Plead.* § 354. 6 *Wheaton's R.* 260. *Bac. Abr.* Abatement. *U. S. Digest*, Abatement. See *Cadere*. At common law, a suit when abated is absolutely dead, but in equity, a suit when abated is, (if such an expression be allowable,) merely in a state of suspended animation, and may be revived. *Story's Eq. Pl. ub. sup.*

ABATER, Abatre. L. Fr. To abate; to beat or break down; to overthrow; to de-

molish or destroy. *Le roy, pur le trespas et pur le desquite, face abate le chastell ou le forcelet*; the king, for the trespass and for the contempt, shall cause the castle or fortalice to be demolished. *Stat. Westm.* l. c. 17. *Abater un faude*; to abate a fold. *Yearb.* P. Edw. III. 48.

To cut down. *Il ad abatu les keynes*; he hath cut down the oaks. *T.* 3 Edw. III. 14.

To abate or quash. *Abatre un bref. Fet Assaver*, § 32. *Ceo abateroit le briefe*, this would abate the writ. *Reg. Orig.* 229 b. *regula*.

To abate; to fall or fail; to come to an end; to become or be declared void. *Le bref n' abatera pas*; the writ shall not abate. *Keilw.* 20 b.

ABATOR. One who abates; one who removes a nuisance; one who enters upon land by way of interposition, before the entry of the heir, or person lawfully entitled. *Litt.* sect. 475. *Co. Litt.* 277 a. *Cowell*. See *Abatement of freehold*.

ABATUDA. L. Lat. In old records. Diminished. *Moneta abatuda*; money clipped, or diminished in value. *Dufresne*.

ABATUS, Abatu. L. Fr. [from *abater*, q. v.] Beaten or thrown down. *Mur abatu*; a wall thrown down. *Britt.* c. 61. *Bois abatu*; wood cut or fallen. *Kelham.* *Arbres abatues de vent*; trees blown down by the wind. *Yearb.* T. 5 Edw. III. 16.

Abated, quashed. *Un briefe fuit abatus*; a writ was quashed. *Reg. Orig.* 97 b. *nota.* *Ne soit le briefe abatus*; the writ shall not be quashed. *Stat. Westm.* l. c. 47.

ABAVIA. Lat. In the civil law. A great great grandmother. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Bract.* fol. 68 b.

ABAVITA. A great great grandfather's sister. *Bract.* fol. 68 b. This is a misprint for *abamita*, (q. v.)

ABAVUNCULUS. Lat. In the civil law. A great great grandmother's brother; (*abavia frater*.) *Inst.* 3. 6. 4. *Dig.* 38. 10. 3. Called *avunculus maximus*. *Id.* 38. 10. 10. 17. Called by Bracton and Fleta *abavunculus magnus*. *Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

ABAVUS. Lat. In the civil law. A great great grandfather. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Bract.* fol. 67 a.

ABBACIA, Abbazia. L. Lat. In old English law. An abbey. *Magna Charta*, 9 Hen. III. c. 33.

ABBAIAUNCE. L. Fr. Abeyance. See *Abeyance*.

ABBAS. L. Lat. An abbot. *Reg. Orig.* 238 a. 803 a. *Flota*, lib. 3, c. 5, § 9.

Abbates; abbots. *Id.* § 8, *Spelman*.

ABBATISSA. L. Lat. An abbess. *Reg. Jud.* 4 b.

ABBETTARE, *Abettare*. L. Lat. In old English law. To abet. *Rast. Entr.* 54. *Abettasse et procurasse*; to have abetted and procured. *Reg. Orig.* 134 a. See *Abet*.

ABBETTATOR, *Abettator*. L. Lat. In old English law. An abettor. *Spelman. Stat. Westm.* 2, c. 12. See *Abettor*.

ABBETTUM. L. Lat. In old English law. Abetment. *Reg. Orig.* 270 a. *Stat. Westm.* 2, c. 12. See *Abetment*.

ABBREVIATE. In Scotch law. An abstract. *Ersk. Inst.* b. 2, tit. 12, § 43.

ABBREVIATIO. L. Lat. In old English law. Abbreviation; an abbreviation. *Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis*; in abbreviations, that number [whether singular or plural,] and that sense is to be taken, by which the grant is not rendered void. 9 *Co.* 48.

ABBREVIATION. A short or contracted mode of writing, very common in old records, law treatises and reports, especially those in Latin and French, and still used to a limited extent in the practice of the courts, and in printed books. There are various kinds of abbreviations; as,

By using the initial letters of words instead of the words at length; as *B. R.* for *Banco Regis*; *Q. B.* for *Queen's Bench*; *N. P.* for *Nisi Prius*; *S. C.* for *Same Case*; *S. P.* for *Same Point*, and the like.

In the Roman law, this mode of abbreviation was sometimes carried to a great extent; as, in their *senatus consulta*, *Q. D. E. R. F. P. D. E. R. I. C.*, which stood for *Quid de ea re fieri placeret, de ea re ita censuerunt*. *Tayl. Civ. Law*, 576.

By using the first syllables instead of the entire words; as *def'* for *defendens*, *bre'* for *breve*, *vic'* for *vicecomes*, *ven'* for *venit*, *dic'* for *dicit*; *re. fa. lo.* for *recordari facias loquelam*; *sus. per col.* for *suspensus per column*; and the more modern and familiar *cur. adv. vult*, for *curia advisari vult*; *fi. fa.* for *fieri facias*; *sci. fa.* for *scire facias*, and the like. So in references to authorities; *lib.* for *liber*, *cap.* for *caput*, and the like.

By doubling the initial letter to denote the plural; as *LL.* for *leges*, laws; *cc.* for *capita*, chapters. All the foregoing kinds of abbreviation are still in common use.

Another mode of abbreviation, now for the most part disused, consisted in omitting one or more of the letters of a word; as *dns* for *dominus*, *het* for *habet*, *hmdi* for *hujusmodi*, *io* for *ideo*, *oibs* for *omnibus*, *qd* for *quod*; and the French *boe* for *bone*, *dde* for *demande*, *pols* for *parols*, and the like; and sometimes in substituting a different letter for those omitted; as *acco* for *actio*, *cassaco* for *cassatio*, *administracon* for *administration*, and the like. But abbreviations of this kind were more properly called contractions. See *Contraction*.

Abbreviations and contractions formed one of the peculiarities of the *court hand* in which the records of the courts were anciently written, and are followed in some of the old printed books, as Bracton, and the Register. Domesday Book abounds in them. They were accompanied by various arbitrary marks (dashes, turns, &c.) upon, through, or over the letters retained, to denote the omissions. *Towns. Pl. per tot.* 1 *Instr. Cleric.* 1-20. See *Court hand*. They were prohibited by the English statute of 4 Geo. II. c. 26, the provisions of which have generally been adopted in the United States. 3 *Bl. Com.* 323. 2 *N. Y. Rev. St.* [275,] 205, § 9. A very few of them, however, continue to be retained, though without any of the ancient marks; as *vs.* for *versus*; *adsm.* for *ad sectam*, and the like.

The principal abbreviations used in the books will be found in this work under the proper alphabetical heads. Others, including those used in references to authorities, may be found in the tables of explanations.

ABBROCAMENTUM, *Abrocamentum*. L. Lat. In old English law. Abbrochment, or abroachment. *Spelman*. See *Abbrochment*.

ABBROCHMENT, *Abrochment*, *Abroachment*. [L. Lat. *abrocamentum*; from *abroch*, or *abroach*, Sax. *abraecan*, to break.] In old English law. The buying up of goods by wholesale, (*emptio mercium integrarum*.) before they are brought to a market or fair, and selling them again, (*breaking* them up, — *per portiones distractio*.) by retail; a forestalling of the market. *Spelman*, voc. *Abrocamentum*. Cowell.

ABBUTTALS. See *Abbuttals*.

ABBUTTRE. L. Fr. To abut, (q. v.) *Abbuttant et adjoymant al haut estret*; abutting and adjoining the highway. *Yearb.* P. 11 Hen. VI. 2.

ABCARIARE. L. Lat. In old Eng-

lish law. To carry away. *Cepit et abcaria-vit*: (he) took and carried away. *Dyer*, 70 a.

ABDICATION. [Lat. *abdication*, from *abdicare*, to renounce.] The renunciation or relinquishment of an office, either formally and expressly, or by actions inconsistent with the proper discharge of its duties. Commonly used to express the voluntary renunciation of supreme power. 1 *Bl. Com.* 211. 4 *Id.* 78. *Termes de la ley*.

ABDITORIUM. L. Lat. [from *abdere*, to hide.] In old records. A place to hide and preserve goods, plate or money; an abditory. 3 *Mon. Angl.* 173. *Cowell*.

ABDUCERE. Lat. In old English law and practice. To lead away; to carry away. *Abduxit*; (he) led away. Applied in old writs to the taking of live animals, as distinguished from *asportavit*, (q. v.) *F. N. B.* 86 A. note. See *Cepit et abduxit*. Applied also to the taking of persons. *Rapuit et abduxit*; (he) ravished and carried away. *Stat. Westm.* 2, c. 35. 2 *Inst.* 440. *De hæredibus vi abductis*; concerning heirs carried off by force. *Stat. Merton*, c. 6.

ABDUCTION. [Lat. *abductio*, from *abducere*, to lead away.] In criminal law. The offence of taking away a man's wife, child or ward, by fraud and persuasion, or open violence. 3 *Bl. Com.* 139-141. 3 *Steph. Com.* 538, 539. 1 *Russell on Crimes*, 701. The term is applied also to the unlawful taking or detention of any female, for the purpose of marriage, concubinage, or prostitution. *Stat.* 9 Geo. IV. c. 31, sects. 19, 20. 4 *Steph. Com.* 129. See 2 *N. Y. Rev. Stat.* [663, 664,] 553, §§ 24-26. See *Kidnapping*.

ABEARANCE, Abearing. [from *abear*, or *bear*, to behave; L. Lat. *gestus*.] In old English law. Bearing or carriage; deportment, conduct, or behavior.* 4 *Bl. Com.* 256. See *Good abearance*.

ABEISSEMENT, Abessment, Abbasement. L. Fr. A lowering, lessening, abatement. *Kelham*.

ABEREMURDER. [Sax. *æberemord*, or *eberemord*, from *æbere*, evident or open, and *mord*, killing, murder: L. Lat. *abermurdrum*, *apertum murdrum*.] In Saxon law. Plain or apparent murder, open killing, (*cædes manifesta*), as distinguished from the less heinous crimes of manslaughter and chance-medley. Declared a capital offence, without fine or commuta-

tion, by the laws of Canute and of Henry I. *LL. Canuti*, c. 93. *LL. Hen. I.* c. 13. *Spelman. Cowell*.

ABESSE. Lat. In the civil law. To be absent; to be away from a place. Said of a person who was *extra continentia urbis*, (beyond the suburbs of the city.) *Dig.* 50. 16. 173. 1. Within that limit he was not considered as absent, unless he concealed himself. *Id.* *Dig.* 50. 16. 199. pr. *Dig.* 3. 3. 5, 6.

To be out of one's possession, as a thing was when lost or stolen. *Dig.* 50. 16. 13, 14.

To be out of existence, not in *rebus humanis*. *Dig.* 50. 16. 13. 3.

ABET. [from Sax. *a*, on, or onward, and *betan*, or *gebetan*, to stir up, or excite; L. Lat. *abettare*.] In criminal law. To encourage, set on, stir up, or excite to commit a crime. *Spelman*, voc. *Abbettator*. *Cowell. Whishaw*. Always taken in a bad sense, and generally used in connection with the word *aid*; as in the phrases, "to aid and abet," "aiding and abetting."

ABETMENT. [L. Lat. *abettum*, *abettum*; L. Fr. *abette*.] In old criminal law. An encouraging, or instigation. *Staundf. Pl. Cor.* 105. *Cowell. Blount*.

ABETTARE. L. Lat. In old English law. To abet, (q. v.) *Abettans*; abetting. 2 *Show.* 512. *Abettans, confortans et manutenens*; abetting, comforting, and maintaining. 2 *Hov. State Trials*, 746.

ABETTATOR. L. Lat. In old English law. An abettor. *Fleta*, lib. 2, c. 65, § 7. See *Abettor*.

ABETTOR. [L. Lat. *abettator*, *abettator*.] In criminal law. An instigator, or setter on, (*incitator*;) one who promotes or procures a crime to be committed; one who commands, advises, instigates, or encourages another to commit a crime, (*qui alium ad facinus aliquod perpetrandum exacuit, tutaturve facturum*.) *O. N. Br.* 21. *Spelman*, voc. *Abbettator*. *Cowell*. Now generally applied to a person present, either actually or constructively, at the commission of a crime, who does not commit it with his own hands, but assists, facilitates, or encourages its perpetration. 1 *Russell on Crimes*, 26, 27. 4 *Bl. Com.* 33. Sometimes called a principal in the second degree. *Id. ibid.* See *Abet*. Mere presence (though actual) at the commission of a crime, does not make a person an aider and abettor. It is neces-

sary that he should *do* or *say* something showing his consent to the felonious purpose, and contributing to its execution. 9 *N. Carolina R.* 440. 13 *Missouri R.* 382. 1 *Wisconsin R.* 159.

ABEYANCE, *Abeiance*, *Abbayance*, *Abbaiaunce*. L. Fr. & Eng. [from Fr. *bayer*, or *abbayer*, to expect, to wait for earnestly, to gape after, to bay at; L. Lat. *abeyantia*.] In the law of estates. Expectation, waiting, suspense; remembrance and contemplation in law. Where there is no person in existence in whom an inheritance can vest, it is said to be in *abeyance*; that is, in expectation; the law considering it as always potentially existing, and ready to vest whenever a proper owner appears. 2 *Bl. Com.* 107. Or, in other words, it is said to be in the remembrance, consideration and intendment of the law. *Litt.* sect. 646, 650. Thus, in a grant to J. for life, and afterwards to the heirs of R., the inheritance is plainly neither granted to J. nor R., nor can it vest in the heirs of R. till his death: it remains, therefore, in waiting, or *abeyance*, during the life of R. 2 *Bl. Com. ub. sup. Plowd.* 29 a. 35 a. 556.

The term *abeyance* is also sometimes applied to personal property. Thus, in the case of maritime captures during war, it is said that "until the capture becomes invested with the character of prize by a sentence of condemnation, the right of property is in *abeyance*, or in a state of legal sequestration." 1 *Kent's Com.* 102. It has also been applied to the franchises of a corporation. "When a corporation is to be brought into existence by some future acts of the corporators, the franchises remain in *abeyance*, until such acts are done, and when the corporation is brought into life, the franchises instantaneously attach to it." Story, J. 4 *Wheaton's R.* 691.

* * An inheritance in *abeyance* has been otherwise said to be in *nubibus*, (in the clouds;) a figure intended to denote a condition of suspension, indefinite and intangible existence, remoteness from human view and enjoyment, or molestation; in connection with the quality of readiness to descend and vest at the proper time. *Litt. ub. sup. Co. Litt.* 342 b. *Hob.* 335. 2 *Crabb's Real Prop.* 8, § 951. 4 *Kent's Com.* 258, 260, note. So, it has been said to be in *gremio legis*, (in the bosom of the law,) that is, under the special protection

of the law, and existing only in its view, intendment or consideration. 1 *Co.* 131, 134, *arg. Spelman*, voc. *Abeyantia. Litt. ub. sup.* So the fee, in such case, has been said by Britton to be in *the balance*, (*le fee est en balaunce*.) *Brit.* fol. 249. And Bracton uses the corresponding phrase, *in pendent*, (in suspension.) *Bract.* fol. 19 a. 20 a. *Spelman* prefers giving to *abbayer*, the root of the word, the sense of fixedness of position, (*certain stationi inherere*,) the fee being stopped or arrested in its transit from one party to another. Mr. Stephen objects to *expectation* as the proper import of *abeyance*, and prefers Littleton's exposition of the term,—remembrance, intendment and consideration of the law; referring to the case of the parson of a church, where the fee is in *perpetual abeyance*. 1 *Steph. Com.* 223, note (1). Mr. Fearn treats the whole notion of *abeyance* as an absurd and unintelligible fiction. *Fearne on Remainders*, 452, [360.] And the inclination in modern law seems to be, to substitute in its place the doctrine, that where there is no person in existence in whom an inheritance can vest, it remains in the grantor or his heirs, or (in case of a devise,) in the heirs of the testator, until the contemplated contingency happens. 2 *Chitt. Bl. Com.* 107, notes.

An inheritance in *abeyance* answers to the *hereditas jacens*, or *caduca* (q. v.) of the civilians and feudists, which, by a figure directly opposite to that of suspension, was considered as waiting in a state of *prostration* for the heir to take it up. *Bract.* fol. 8 a. 160 a. *Co. Litt.* 342 b. *Incertam et caducam hereditatem relevabat*; raised, or took up the doubtful and fallen inheritance. 2 *Bl. Com.* 56.

ABEYANTIA. L. Lat. *Abeyance. Spelman.* See *Abeyance*.

ABIATICUS. *Aviaticus*. L. Lat. In feudal law. A grandson; the son of a son. *Spelman. Lib. Feudorum*, Baraterii, tit. 8, cited *ibid.*

ABIDING BY. In Scotch law. Committing one's self to the consequences of an act. A term used in cases where a deed is challenged as forged. The party founding on the deed must appear in court and *abide by* it. This is done by his signing a declaration that he *abides by* the deed quarrelled, [contested,] *sub periculo falsi*, which has the effect of pledging him

to stand to the consequences of founding on a forged deed. *Bell's Dict.*

ABIGEATORES. Lat. [from *abigere*, to drive away.] In the civil law. Cattle-stealers; those who drove away cattle or other animals, with the intention of stealing them. A rarer form of *abigei*, (q. v.) *Calv. Lex. Brissonius*, voc. *Abigei*.

ABIGEATUS. Lat. [from *abigere*, to drive away.] In the civil law. The offence of stealing, or driving away cattle. *Dig.* 47. 14. 2. See *Abigere*, *Abigeus*.

ABIGEI. Lat. In the civil law. Cattle stealers. *Dig.* 47. 14. 1. 1. *Calv. Lex. Brissonius*. 4 *Bl. Com.* 239. See *Abigeus*.

ABIGERE. Lat. [from *ab*, from, and *agere*, to drive.] In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. *Dig.* 47. 14. *de abigeis*. Applied, also, to the similar offence of cattle stealing on the borders between England and Scotland.—*Scott's Minstrelsy of the Scottish Border*, *Introd. Append.* No. vii.

To drive out; to expel by force; to produce abortion. *Dig.* 47. 11. 4. *Brissonius*.

ABIGEUS, *Abigevus*, *Abigeator*, *Abactor*. Lat. [from *abigere*, to drive away.] In the civil law. A stealer of cattle: one who drove, or drew away (*subtrahit*) cattle from their pastures, as horses or oxen from the herds, and made booty of them; and who followed this as a business, or trade, (*quasi artem*.) *Abigei proprie hi habentur qui pecora ex pascuis, vel ex armentis subtrahunt, et quodammodo deprædantur, et abigendi studium quasi artem exercent; equos de gregibus vel boves de armentis abducentes.* *Dig.* 47. 14. 1. 1. The term was applied also to those who drove away the smaller animals, as swine, sheep and goats. *Id.* 47. 14. 1, 2. In the latter case, it depended on the number taken, whether the offender was *fur* (a common thief,) or *abigeus*. *Id.* 47. 14. 3. *Quantitas discernit furem ab abigeo.* *Id.* 48. 19. 16. 7. Or, as Bracton quotes it, *quantitas discernit furem ab abigeo.* *Bract.* fol. 105 a. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus*. *Dig.* 47. 14. 3. And those who frequently did this were clearly *abigei*, though they took but an animal or two at a time. *Id.* 47. 14. 3. 2. See *Cod.* 9. 37. *Nov.* 22, c. 15, § 1.

ABINDE. L. Lat. In old English

law. From thence. 2 *Mod.* 27. 6 *Id.* 252.

ABISHERSING, (properly *Mishersing*.) In old English law. A freedom or immunity from forfeitures, or amercements. *Spelman*. See *Mishersing*.

ABJECTIRE. L. Lat. In old European laws. To forfeit one's recognizance, (*vadimonium deserere*;) to neglect a plea or suit, (*placitum negligere*;) to fail in an action, (*deficere in lite*;) to lose a cause by default or neglect to prosecute, (*causam per defaultam, vel non proseguendo amittere*.) *Spelman*.

ABJUDICARE. L. Lat. [from *ab*, out of, and *judicare*, to adjudge.] In old English law. To deprive of a thing by the judgment of a court; the same with *forisjudicare*, (q. v.) *Ubi custos abjudicatus est de custodia sua*; where a guardian is deprived of his guardianship. *Bract.* fol. 256 a. *Abjudicetur medius de feodo et servitio suo*; the mesne shall be forjudged of his fee and service. *Fleta*, lib. 2, c. 50, § 8.

ABJUDICATIO. L. Lat. [from *abjudicare*, q. v.] In old English law. The depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio*, forjudgment, forjudger. *Fleta*, lib. 2, c. 50, § 8. *Co. Litt.* 100 a, b. *Towns. Pl.* 49. See *Forisjudicatio*.

ABJUDICATUS. L. Lat. Forjudged. See *Abjudicare*.

ABJURARE. Lat. [from *ab*, from, and *jurare*, to swear; L. Fr. *forjurer*.] In old English law. To swear from; to swear to give up, or leave a thing, or place; to renounce or abandon by, or upon oath; to forswear. *Abjurare regnum*; to abjure the realm, to swear to leave it. *Bract.* fol. 135 b. 136 a. *Cart. de Forest.* c. 10. *Si fur convictus fuerit, aut morti tradatur, aut regnum abjuret, vel patriam, comitatum, civitatem, burgum vel villam*; if the thief be convicted, he shall either be delivered up to death, or he shall abjure the realm, or the country, the county, city, borough, or town. *Bract.* fol. 151 b. *Abjurare terram*; to abjure the land. *Articuli Cleri*, c. 10.

ABJURATION. [Lat. *abjuratio*, from *abjurare*, q. v.] A renunciation or abandonment by, or upon oath; the taking or making oath to leave a place. *Abjuration* in this sense, in English law, usually was of the realm, but it might also be of a par-

ticular county, city, borough, or town. See *Abjurare*.

The taking an oath to renounce one's allegiance to a particular sovereign, prince, or state. See *Abjuration of allegiance*.

ABJURATION OF ALLEGIANCE. In political law. A declaration under oath, before a competent authority, that the party making oath renounces and *abjures* all the allegiance and fidelity which he owes to a particular sovereign. A formality required of all aliens, by the laws of the United States, previously to their being naturalized. *Act of Congress*, April 14, 1802. 2 *Kent's Com.* 64, 65. An oath, abjuring all allegiance to the descendants of the Pretender, is required in England from all persons holding office. 1 *Bl. Com.* 368. 2 *Steph. Com.* 422. 3 *Id.* 106. See *Allegiance*.

ABJURATION OF THE REALM. [*Lat. abjuratio regni.*] In ancient English law. The taking an oath to depart from the kingdom, and never return, unless by permission; a species of sworn, or self-banishment, formerly allowed to offenders who confessed their crimes, after fleeing to a sanctuary, as the means of saving their lives. *Bract.* fol. 135 b. 3 *P. Wms.* 38, note [B.] 4 *Bl. Com.* 332. The blood of the person thus *abjuring* was attainted, he forfeited all his goods and chattels, and was considered as dead in law. *Id.* 333. 1 *Id.* 443. *Co. Litt.* 133 a.

* * Abjuration of the realm is generally considered as having been abolished by statute 21 Jac. I. c. 28; but it is mentioned in the books at a later period. 2 *Inst.* 629. 11 *East*, 301. 2 *Kent's Com.* 156, note. The old oath of abjuration, as given by Bracton, was in this form: "Hear this, ye justices, or coroners, that I will depart from the realm of England, and that I will not return thither again, unless by permission of the lord the king, or his heirs. So help me God," &c. *Bract.* fol. 136, lib. 3, c. 16. In Britton and Fleta, the oath is given in fuller terms. *Britt.* c. 16, fol. 25. *Fleta*, lib. 1, c. 29, § 3. According to Britton, it was required to be taken at the churchyard gate. The party thus *abjuring* was then obliged to select a port where he would embark, and a certain time, computed by reasonable days' journeys, was allowed him to reach it. He was not allowed to quit the king's highway, nor to stay in any one place more than two nights, nor

to turn aside from the road, unless for sufficient cause; but was bound to go straight to the port, so as to be there at the day given him, and to embark as soon as he could obtain a vessel and a wind, unless detained by stress of weather. If he failed in any of these particulars, it was at his peril. *Bract.* fol. 135 b. 136. According to Britton and Fleta, he was obliged to travel ungirded, with head and feet bare, in nothing but his coat, like a criminal about to be hung, (*in pura tunica, tanquam in patibulo suspendendus*), and with a cross in his hands. *Fleta*, lib. 1, c. 29, § 5. Fleta records the still more remarkable circumstance, that when he came to the sea, he was bound to walk into it, up to his neck, (*ingredi debet usque ad collum*), if he could not find the means of crossing, and having set up a cry, (*hutesio levato*), to rest on the shore until he found such means. *Id. ibid.* But he might pass out of the kingdom by land, as into Scotland. *Britt.* c. 16.

ABJURE. [*L. Lat. abjurare*; *L. Fr. forjurer.*] To renounce, or abandon, by, or upon oath. See *Abjurare*, *Abjuration*.

ABLE. *L. Fr.* [*L. Lat. habilis*, q. v.] In old English law. Fit; proper; *Ables e'e vend'*; fit to be sold; merchantable. *Yearb.* H. 11 Hen. VI. 13.

ABMATERTERA. *Lat.* In the civil law. A great great grandmother's sister, (*abavia soror*). *Inst.* 3. 6. 4. *Dig.* 38. 10. 3. Called *matertera maxima*. *Id.* 38. 10. 17. Called by Bracton, *abmatertera magna*. *Bract.* fol. 68 b.

ABNEPOS. *Lat.* In the civil law. A great great grandson. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6.

ABNEPTIS. *Lat.* In the civil law. A great great granddaughter. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6.

ABOLERE. *Lat.* In civil and old English law. To obliterate. *Abolitum*; obliterated. *Cod.* 6. 33. 3. *Rasum vel abolitum*; razed or obliterated. *Fleta*, lib. 2, c. 54, § 12. *Id.* c. 13, § 6. See *Id.* lib. 6, c. 50, § 2.

ABOLITIO. *Lat.* [from *abolere*, to abolish or obliterate.] In the civil law. Leave to discontinue an accusation. *Dig.* 48. 16. *Cod.* 9. 42, 43, 45.

Obliteration; effacement; a putting out of memory; amnesty; pardon. *Dig.* 48. 16. 8-10.

ABOLITION. In old practice. A destroying, or putting an end to an action or

prosecution. Leave given to a criminal accuser to desist from further prosecution. *Stat. 25 Hen. VIII. c. 21. Cowell.* Answering to the entry of a *nolle prosequi* in modern practice. See *Abolitio*.

ABONDANCE. L. Fr. In old practice. Surplusage. *Yearb. P. 7 Hen. VI. 12.*

ABORDAGE. Fr. In French commercial law. Collision of vessels. *Emerigon, Traite des Ass. ch. 12, sect. 14.*

ABORTION. In criminal law. The premature exclusion of the human fetus, after the period of quickening; which, when procured or produced with a malicious design or for an unlawful purpose, is a criminal offence. 4 *Steph. Com. 128. 1 Russell on Crimes, 671. 1 Chitt. Gen. Pr. 35. 2 N. Y. Rev. Stat. [661,] 550, § 9. Id. [694,] 578, § 21. Statutes of Ohio, chap. 35, p. 252. Whart. Am. Crim. Law, b. 4, ch. 6, § 1214, et seq.*

"ABOUT." Near; nearly; in the neighborhood of. An expression constantly used, where a time or sum cannot be precisely stated, importing the possibility of a small variation from it. Where the words, "about three hundred quarters, more or less," were used in an agreement, it was held that the parties could not be taken to have contemplated so large an excess as fifty over three hundred quarters. 2 *B. & Ad. 106.*

Around. "About the breast," in an indictment, might mean only *near* the breast; but "about the neck" means *around* it. *Parke, J. 5 Carr. & P. 121.*

ABOUTIR. L. Fr. To about. See *Abut.*

ABOUTISSEMENT. L. Fr. An abutment, or abuttal. See *Abuttal.*

ABOVE. [Lat. *super, supra.*] In practice. Higher; superior. The court to which a cause is removed by appeal or writ of error, is called the court *above*.

Principal; as distinguished from what is auxiliary or instrumental. Bail to the action, or special bail, is otherwise termed bail *above*. 3 *Bl. Com. 291.* See *Below*.

ABPATRUUS. Lat. In the civil law. A great great grandfather's brother, (*abavi frater.*) *Inst. 3. 6. 4. Dig. 38.10.3.* Called *patruus maximus.* *Id. 38. 10. 10. 17.* Called by Bracton and Fleta, *abpatruus magnus.* *Bract. fol. 68 b. Fleta, lib. 6, c. 2, § 17.*

ABRADERE. Lat. [from *ab*, from, and *radere*, to scrape.] In old practice. To scrape off, (as the writing of an instru-

ment,) to erase. *Abrasum*; erased. *Bract. fol. 413 b. Fleta, lib. 6, c. 50, § 2.*

ABRASIO. Lat. [from *abraderere*, to scrape off.] In old English law. A scraping off; erasure in a writ. *Bract. fol. 413 b. Fleta, lib. 2, c. 13, § 6.*

ABRIDGE. [from Fr. *abreger*; L. Lat. *abbreviare.*] In old practice. To make shorter; not, however, in words only, as in the popular sense, retaining the substance, but by subtracting, severing, or leaving out some of the substance itself. Applied to complaints or declarations in the old real actions. *Bro. Abr. Abridgment. Cowell. Story, J. 3 Peters' R. 99, 183.*

ABROACHMENT. See *Abbroachment.*

ABROCAMENTUM. See *Abbrocamentum.*

ABROCEUR. L. Fr. A broker. *Kelham.* See *Broker.*

ABROGARE. Lat. [from *ab*, from, off, or away, and *rogare*, to propose or pass.] In the civil law. To take away, annul, or repeal; to abrogate. *Rogare legem*, among the Romans, signified to propose a law for adoption, (literally, to ask for a law,) and also to adopt a law proposed; to pass or make it. See *Rogare.* *Abrogare legem*, or *legi*, signified the reverse of this, viz., to annul a law; to undo what had been done in passing it; to repeal it. *Abrogatur legi cum prorsus tollitur*; a law is abrogated when it is entirely taken away. *Dig. 50. 16. 102. Leges posteriores priores contrarias abrogant.* Later laws abrogate former ones that are contrary to them. *Cro. Jac. 121. 11 Co. 62 b.* Where two laws are contrary to, or in conflict with each other, that which was last made is always understood as abrogating the other.

From *abrogare* has been formed the English *abrogate*, but no corresponding word has been framed from the simple *rogare*. In the Roman law, various other words compounded of *rogare* were in use; as *derogare*, *subrogare*, *obrogare*, *exrogare*, (qq. v.) *Tayl. Civ. Law, 155.*

ABROGATE. [Lat. *abrogare*, q. v.] To undo what has been done in passing a law; to annul a law by an act of the same power which made it; to annul by an authoritative act; to repeal. See *Abrogare.* Applied also to the abolition of established customs, by a different and long-continued usage.

ABROGATION. [Lat. *abrogatio*, from

abrogare, q. v.] The act of abrogating; the annulling or repeal of a law by authority of the legislative power. See *Abrogate*, *Express abrogation*, *Implied abrogation*.

ABSCOND. [from Lat. *abscondere*, to hide away.] To hide or conceal one's self; to keep close; to go away privately. Applied to a debtor who clandestinely withdraws from the place of his residence or business, or who secretes himself to avoid legal process. 2 *Kent's Com.* 401. *N. Y. Rev. Stat.* Part II. ch. v. tit. 1. A debtor may *abscond*, without actually leaving the state. 7 *Maryland R.* 209.

ABSENCE. In Scotch law. Want, or default of appearance. A decree is said to be *in absence* where the defender [defendant] does not appear. *Wharton's Lex. Ersk. Inst.* b. 4, tit. 3, § 6. See *Decreet*.

ABSENS. Lat. In the civil law. Absent. *Absentem accipere debemus eum qui non est eo loci in quo petitur*; we ought to consider him absent who is not in the place where he is demanded. *Dig.* 50. 16. 199. See *Abesse*.

ABSENTE. Lat. [abl. of *absens*.] Being absent. A common term in the old reports. "The three justices, *absente* North, C. J. were clear of opinion." 2 *Mod.* 14.

ABSENTEE. [Fr. *absent*; Lat. *absens*.] One who is away from his domicil, or usual place of residence. *Bouvier*. One who has resided in the state, and has departed without leaving any one to represent him. *Civil Code of Louisiana*, Art. 3522, n. 3.

One who never was domiciliated in the state, and resides abroad. *Id. ibid.*

ABSENTIA. Lat. Absence. *Absentia ejus qui reipublicæ causâ abest, neque ei neque alii damnosa esse debet*; the absence of him who is away in behalf of the republic, [on business of the state,] ought neither to be prejudicial to him nor to another. *Dig.* 50. 17. 140.

ABSIS, Absida. Lat. [Gr. ἀψίς.] In ecclesiastical law. An arch or vault; (*formix, arcus*,) any thing made in the shape of an arch, (*quod in curvamen arcuatum constituitur*.) *Spelman*.

A bishop's seat or bench, (*pro episcoporum subselliis*.) *Id.*

The choir of a church, or *presbyterium*. *Id.*

A receptacle or coffer, in which images were kept, upon the altar. *Id.*

A church-porch. *Id.*

ABSOILE. *Abssoller, Absouldre, Absoudre.* L. Fr. [from Lat. *absolvere*.] To absolve, acquit, forgive, pardon. *Kelham*. Hence the old English *assoil*.

ABSOLUTA. Lat. Absolute, complete, without exception, or condition. *Absoluta sententia expositore non indiget*. An absolute sentence or proposition, [one that is plain without any scruple, or absolute without any saving,] needs not an expositor. 2 *Inst.* 533.

ABSOLUTE. [Lat. *absolutus, absoluta, absolutum*; from *absolvere*, to discharge, or perfect.] Complete and perfect in itself, without relation to, or dependence on other things or persons; as an *absolute* right.

Without condition, exception, restriction, qualification, or limitation; as an *absolute* conveyance, an *absolute* estate.

Final, peremptory; as an *absolute* rule. See *infra*.

ABSOLUTE CONVEYANCE. A conveyance by which the right or property in a thing is transferred, free of any condition, or qualification, by which it might be defeated, or changed; as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance.* See *Mortgage, Defeasance*. A deed, absolute on the face of it, may, however, be valid and effectual as a mortgage, as between the parties, if it was intended by them to be merely a security for a debt. 4 *Kent's Com.* 142, 143.

ABSOLUTE ESTATE. An estate in lands not subject to, or defeasible upon any condition.* See *Estate upon condition*.

ABSOLUTE PROPERTY. Full and complete ownership of chattels in possession, as distinguished from that of a special, qualified, or temporary kind. 2 *Bl. Com.* 388. 2 *Steph. Com.* 73. 2 *Kent's Com.* 347.

ABSOLUTE RIGHTS. Those rights which belong to natural persons, as individuals, in contradistinction to those which arise from the civil and domestic relations; consisting of the right of personal security, the right of personal liberty, and the right to acquire, enjoy, and dispose of property. 1 *Bl. Com.* 123, 129, 141. 2 *Kent's Com.* 1.

ABSOLUTE RULE. In practice. A rule of court commanding something to be done *absolutely*, and at all events, as distin-

guished from a rule *nisi*, which commands something to be done, *unless* cause be shown against it; (or, as the latter is more commonly called, a rule to *show cause* why a thing should not be done.) 3 *Steph. Com.* 680. 1 *Tidd's Prac.* 485. See *Nisi, Rule.*

ABSOLUTE WARRANTICE. In Scotch law. A warranty against all incumbrances whatever. 1 *Kames' Equity*, 290, 293.

ABSOLUTELY. Completely, wholly; without qualification; without reference or relation to, or dependence upon, any other person, thing, or event. To give property to a person *absolutely*, is to create such person the absolute and uncontrolled owner of it. But it has been held that the word *absolutely*, in a will, may be so far qualified by accompanying expressions as to convey only a limited interest. See 2 *Penn. St. R.* 120, 133.

ABSOLUTUM ET DIRECTUM DOMINIUM. L. Lat. Absolute and direct, (or right) ownership. 2 *Bl. Com.* 105. *Co. Litt.* 1 b. See *Directum, Dominium.*

ABSONIARE. L. Lat. In Saxon law. To detest and avoid. *Cowell.*

ABSQUE. Lat. Without. *Absque generali senatus et populi conventu et edicto*; without the general convention and order of the council and people. *Will. of Malms.* lib. 3. 1 *Bl. Com.* 199. See *Sine.*

ABSQUE ALIQUO INDE REDDENDO. L. Lat. Without rendering, or returning any thing therefrom, or therefor. 9 *Co.* 123. A phrase applied to ancient grants, where no tenure was reserved or mentioned. *Id. ibid.* *Bacon's Arg.* Low's Case of Tenures. "As free as the crown." *Id.*

ABSQUE CONSIDERATIONE CURLE. L. Lat. In old practice. Without the consideration of the court; without judgment. *Stat. Marlbr.* cited in *Fleta*, lib. 2, c. 47, § 13.

ABSQUE HOC. L. Lat. Without this; (*absque hoc quod*, &c.; without this, that, &c.) In pleading. Technical words of denial, made use of in pleading by way of special traverse; which is hence sometimes called a traverse with an *absque hoc*. *Steph. Plead.* 165—186. 9 *Co.* 13. See *Special traverse, Sine hoc quod, Sans ceo que, Without this that.*

This seems to have been originally an ordinary phrase, its barbarous form arising from its peculiar mode of application in

composition. Thus, in the statute of Westminster 2: *Cum duo vel plures teneant boscum, turbariam, piscariam, vel alia, hujusmodi in communi, absque hoc quod aliquis sciat suum separare*: where two or more hold a wood, turbary, piscary, or other such things in common, without this, that any one knows, (i. e. without any one knowing, or where none knows,) his several. *Stat. Westm.* 2, c. 22. *Fleta*, lib. 1, c. 12, § 21. Spelman supposes it to be of Gallic origin, and refers to a constitution of Alan, Duke of Bretagne, A. D. 1087, in which the phrase occurs: *absque eo quod cognosceret*, without this, that he knows, or without knowing.

ABSQUE IMPETITIONE VASTI. L. Lat. [L. Fr. *sans* (or *sauns*), *empeschement de vast* (or *gast*.)] Without impeachment of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases, (as the equivalent English phrase sometimes is,) signifying that the tenant or lessee shall not be liable to suit, (*impetitio*), or challenged, or called to account, for committing waste. 2 *Bl. Com.* 283. 4 *Kent's Com.* 78. *Co. Litt.* 220 a. *Litt.* sect. 352. See *Bacon's Arg.* Case of Impeachment of Waste; *Works*, iv. 225. See *Impetitio, Vastum.*

ABSQUE TALI CAUSA. L. Lat. In pleading. Without such cause. See *De Injuriâ suâ propriâ absque tali causâ.*

ABSTRACT OF A FINE. In old conveyancing. One of the parts of a fine, being an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 *Bl. Com.* 351. *Id.* Appendix, No. IV, sect. 4. *Shep. Touchst.* 3. More commonly called the *note* of the fine. See *Fine, Concord.*

ABSTRACT OF TITLE. In conveyancing. An abstract or summary of the most important parts of the deeds, and other instruments composing the evidences of a title to real estate; arranged usually in chronological order, and intended to show the origin, course and incidents of the title, without the necessity of referring to the deeds themselves. It also contains a statement of all charges, incumbrances, liens, and liabilities to which the property may be subjected, and of which it is, in any way, material for purchasers to be apprised. Abstracts of title constitute an important part of the learning of conveyancing, and in England have been illus-

trated by treatises expressly devoted to the subject. See *Preston on Abstracts*, *Lee on Abstracts*.

ABUNDANS. Lat. [from *abundare*, q. v.] Abundant; overflowing; superfluous; more than necessary. *Abundans cautela*; abundant or superfluous caution. *Cod.* 6. 23. 17.

Abundans cautela non nocet. Abundant caution does no harm. *Fleta*, lib. 1, c. 28, § 1. 11 *Co.* 6. Applied to proceedings in practice, adopted in cases of doubt, in order to make sure. *Id. ibid.* See *Superflua non nocent*.

ABUNDARE. Lat. [from *ab*, from, and *unda*, a wave.] In the civil law. To abound; to be more than full; to overflow, as a river. *Quum flumen sic abundasset.* *Dig.* 2. 11. 2. 8. To be superfluous, or unnecessary; to be more than necessary. *Non solent quæ abundant vitare scripturas.* Superfluous matters do not usually vitiate writings. *Dig.* 50. 17. 94. Calvin makes a distinction between *abundare* and *redundare*.

ABUSE. [Lat. *abusus*, q. v.] Departure from use, (*ab usu*;) immoderate or improper use. An abuse of the law, according to Lord Bacon, is "a wandering, or going astray, or digressing from the ancient practice of the law." "That may be an abuse of the law," he observes, "which is not against law." *Bac. Read. Uses*; *Works*, iv. 137.

ABUSIVE. Lat. In the civil law, Improperly; by an abuse or misuse of language, (*improprie, minus proprie*, Gr. *καταχρηστικῶς*.) *Dig.* 29. 3. 2. 1.

ABUSUS. Lat. In the civil law. Abuse; departure from use; excess of ordinary use; destruction by use or in process of use. *Calv. Lex. Brissonius.*

ABUT. [L. Lat. *abutare*; from Fr. *abutter*, *aboutir*, to limit or bound, from *bout*, an end or limit, butt or mark.] To thrust forth the end, (*finem exerere*;) to meet; to come up to a mark, (*scopum appetere*;) to bound end ways; to terminate. *Spelman*, voc. *Abutare*. Called by *Spelman* a feudal term; (*vox feodalis*.)

To come to an end, as a boundary does when it takes a new direction.* See *Abuttals*.

In modern law. To come up to, touch, meet, lie, or border upon. See *Abuttals*. A close is sometimes described in pleading as *abutting* on the east, on a certain close, &c.; on the west, on a certain field, &c.;

on the north, &c.; and on the south, &c. 2 *Chitt. Pl.* 660—662.

ABUTI. Lat. In the civil law. To abuse; to depart from or exceed use; to use a thing for another purpose than that for which it was intended. *Calv. Lex.*

To consume in the use; to use wholly; to destroy. *Id.*

ABUTTALS, Abbuttals, Buttals. [from *abut*, q. v.] Commonly defined "the buttings and boundings of lands, east, west, north, and south, showing on what other lands, highways, or places, they *abut*, or are limited and bounded." *Cowell. Tomlins.*

Properly, the limits or boundary lines of lands on the *ends*, as distinguished from those on the sides. Well expressed in the old phrase, "buttals and sidings." *Cro. Jac.* 183. Perhaps, also, the angles or terminating points of the lines, especially in lands of an irregular shape.* *Abuttal*, in its strict sense, includes the idea of contiguity. 1 *Taunt.* 495.

* * *Abuttal* is sometimes used in the more modern books in the sense of *boundary* in general; thus, in pleading, a close is sometimes required to be described by its *abuttals* on other lands. 2 *Chitt. Pl.* 660. The word is also used, but more rarely, as a verb, in the same general sense. *Buttal* is a form to be met with in the older books, but with the particular meaning of a boundary at the *end*, as in the phrase, "buttals and sidings," already quoted. *Butt* is a form still sometimes used, but without much precision, in the phrases, "butts and bounds," "buttings and boundings," "butted and bounded." The particular manner of *abuttaling*, (to use the word in its looser sense,) together with the term itself, is said to have originated with the Normans; in proof of which, reference is made to the Customary of Normandy, where the expression occurs, that the declaration must be made *par bouts et costes des dites terres*, &c., (by the ends and sides of the said lands, &c.) *Spelman*, voc. *Abutare*. *Id. Anc. Deeds & Charters*, c. 5. These *bouts*, or ends, were otherwise called heads, (*capita*;) and fronts, (*frontes*;) and were always said to *abut* (*abutare*) upon the next land, and sometimes to head (*capitare*) on it. *Spelman. Cowell.* The sides, (*latera*, or *costes*;) on the other hand, were never said to *abut*, but to *lie* or border *upon*, to adjoin the next land; (*ad terram proximam adjacere*.)

Spelman, ub. sup. See *Headland, Siding*. This shows a marked distinction between the two kinds of boundaries, though it is now lost in the general, and not strictly accurate term, *abuttal*. A still further distinction was sometimes anciently made between one of the ends of a piece of land, and the other, or opposite end, as in the phrases, *caput terræ, cauda terræ*, (qq. v.) This formal division, however, of the boundary lines of lands into ends and sides, seems necessarily predicated on a regular four-sided figure in the land itself.

There is another sense in which the term *abuttal* or *butt* (*bout*), was probably, and perhaps originally used; appearing as it does, to involve the radical meaning of the word, besides being applicable to lands of every shape, and not merely to those where the ends were distinguishable from the sides, viz. the *end* of a boundary line, or the point where it *stopped*, and *turned* in a new direction. These points, or angles were, from the earliest times, distinguished by some visible object, or landmark, as at the present day. According to Camden, there were hillocks raised upon the lines on purpose, which were called *botentines*, from which Cowell conjectures the term *butting* to have sprung. In confirmation of the opinion here advanced, it may be observed that the words *mete* and *butt*, in the common phrases, "metes and bounds," "butts and bounds," and which appear to be the synonymes of *abuttal*, as they are of each other, have both the same double meaning of a *terminating* and *turning* point. See *Butts, Bounds, Metes*.

ABUTTALATUS. L. Lat. In old pleading. *Abuttalled. Towns. Pl.* 26.

ABUTTARE. L. Lat. In old English law. To abut. *Abuttans; abutting. Spelman. Towns. Pl.* 26, 49.

AC. Lat. And. See *Ac etiam*.

As. See *Ac si*.

ACA. L. Fr. Then. *Kelham*.

ACAPTE. Fr. [L. Lat. *accapitum*.] In French feudal law. A species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis*. *Guyot, Inst. Feod.* c. 5, s. 12.

ACATE. See *Achate*.

ACC., ACCORD. Abbreviations of the Fr. *accordant*, and Eng. *accordingly*; frequently used in the books, especially in the

reports, to denote the *accordance* or agreement between one adjudged case and another, in establishing, or confirming the same doctrine, and sometimes, the accordance of judges in opinion in the same case. See *Accordant*. The disagreement or opposition of cases is denoted by *contra*.

ACCAPITARE, *Acapitare, Acaptare*. L. Lat. [from *caput*, head, or chief.] In old English law. To pay homage to a chief lord, on becoming his vassal. *Bract. fol.* 78 a. *Fleta*, lib. 3, c. 16, § 6.

To acknowledge the sovereignty of a chief lord in special cases, as against a mesne; to attorn; (*acaptare et se attournare*.) *Bract. fol.* 389 a. *Fleta*, lib. 3, c. 16, § 38. *Id.* lib. 6, c. 28, § 1.

To attorn to another person than the chief lord, and in derogation of his rights. *Fleta*, lib. 2, c. 50, § 16.

To pay a relief to a chief lord. *Montesquieu, Esprit des Loix*, liv. 31, c. 24, note.

ACCAPITUM. L. Lat. [Fr. *acapte*, q. v.] In old records. Money paid by a vassal upon his admission to a feud; the relief due to the chief lord. *Whishaw*. See *Accapitare*.

ACCEDAS AD CURIAM. L. Lat. (You go to the court.) In English practice. A writ which lies at common law, to remove a cause from an inferior court not of record, such as a hundred court, or court baron, into one of the superior courts. 3 *Bl. Com.* 34. *F. N. B.* 18. 145 E. *Termes de la ley*. 1 *Tidd's Pract.* 38. The writ is directed to the sheriff, commanding him to *go to the court* designated, where the suit or plaint is pending, and there to make a record of such plaint, (*recordari facias loquelam*), and to have such record before the superior court, at a day specified. *Reg. Orig.* 5 b. *Dyer*, fol. 169, n. 20. It is peculiar for the most part to the action of replevin, and is merely a *recordari facias loquelam*, with a clause of *accedas ad curiam*, whence its name. 2 *Tidd's Pr.* 414, 415. See other forms of the writ, *Reg. Orig.* 5 a. 9 b. 10. And see *Recordari facias loquelam*.

ACCEDAS AD VICE COMITEM. L. Lat. (You go to the sheriff.) A writ formerly directed to the coroners of a county in England, commanding them to go to the sheriff, where the latter had suppressed and neglected to return a writ of *pone*, and to deliver a writ to him requiring him to return it. *Reg. Orig.* 83. See *Pone*.

ACCEDERE. Lat. [from *ad*, to, and *cedere*, to go, to belong or appertain.] In the civil law. To go to or with; to be added or joined to; to belong to. *Calv. Lex. Brissonius.* See *Accessio*. Less used than the simple word *cedere*, which constantly occurs. See *Cedere*.

To approach; to be near or next to. *Calv. Lex.* See *Accessus*.

To accede; to assent or agree. *Id.*

ACCEPTANCE. [Lat. *acceptatio*, from *acceptare*, to accept.] A receiving with approbation, or satisfaction; or, in the language of the old books, "a taking in good part." *Termes de la ley. Cowell.*—Approval of, assent to, or acquiescence in a thing received; an agreement to keep a thing received.*

Acceptance is receipt, and something more. There cannot be acceptance without receipt, but there is often receipt without acceptance. *Smith on Contracts*, 71, note (a). The purchaser of goods may, on receiving them from the seller, *accept* them, or return them as not answering the contract. If he neglect to return them within a reasonable time, or to give notice to the seller that he does not intend to take them, he is considered as having accepted them, and will be held to the purchase.* 2 *M. & W.* 653, 656. 11 *Id.* 534. *Smith on Contracts, ub. sup.* So, the drawee of a bill of exchange may, on receiving it, either *accept* it, or return it without acceptance; and the same distinction has been made between the receipt and the *acceptance* of a deed. *Ersk. Inst.* b. 3, tit. 2, § 45.

ACCEPTANCE OF A BILL OF EXCHANGE. [L. Lat. *acceptatio*.] In mercantile law. The act by which the person on whom a bill of exchange is drawn, (called the *drawee*,) assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable to pay it, when due. 4 *East*, 57, 72. 2 *Bl. Com.* 469. It may be by parol, or in writing, and either general or special, absolute or conditional; and it may be impliedly, as well as expressly given. 3 *Kent's Com.* 83, 85. *Story on Bills*, §§ 238, 242—248, 251. But the usual and regular mode of acceptance is by the drawee's writing across the face of the bill the word "*accepted*," and subscribing his name; after which he is termed the *acceptor*. *Id.* § 243. See 2 *Hill's* (N. Y.) *R.* 582. 10 *Foster's R.* 256. See *Acceptor*.

ACCEPTANCE AU BESOIN. Fr. In French law. Acceptance in case of need; an acceptance by one on whom a bill is drawn *au besoin*, that is, in case of refusal or failure of the drawee to accept. *Story on Bills*, §§ 65, 254, 255.

ACCEPTANCE SUPRA PROTEST. In mercantile law. Acceptance over protest. An acceptance of a bill by a third person, *after protest* for non-acceptance by the drawee; such acceptance being for the honor of the drawer, or some particular endorser. 3 *Kent's Com.* 87. *Story on Bills*, § 121. Called in French law, acceptance *par intervention*. *Id.* § 256.

ACCEPTARE. Lat. In old pleading. To accept. *Acceptavit*; he accepted. 2 *Str.* 817. *Non acceptavit*; he did not accept. 4 *Man. & Gr.* 7.

In the civil law. To accept; to assent; to assent to a promise made by another. *Grotius de Jur. Bell.* lib. 2, c. 11, § 14.

ACCEPTATIO. Lat. [from *acceptare*, q. v.] In mercantile law. Acceptance of a bill. *Heinecc. de Camb.* c. 2, § 16. *Id.* c. 6, § 9.

In the civil law. The assent of a person to whom a promise is made. *Grot. de J. B.* lib. 2, c. 11, §§ 14—16.

ACCEPTILATIO. Lat. [from *acceptum*, a thing received, and *latio*, a putting down.] In the civil law. A holding, considering, or acknowledging as received. A form of releasing one from an obligation, without payment, called an imaginary payment; one of the modes of dissolving obligations in the civil law. *Inst.* 3. 30. [29.] 1. *Dig.* 46. 4. *Bract.* fol. 101. It was made verbally, in the usual form of question and answer, thus: the debtor said to the creditor, *Quod ego tibi promisi habesne acceptum?* (Do you consider what I promised you as received?) The creditor answered, *Habeo*, (I do.) It might also be made in Greek, provided it were in the same form. But it was only verbal contracts that could be thus dissolved. *Inst.* 3. 30. 1. *Dig.* 46. 4. 8. 4. *Cod.* 8. 44.

There was also a more general form of *acceptilatio*, by which obligations of all kinds might be dissolved, after being reduced to the form of a verbal stipulation. *Inst.* 3. 30. 2. *Dig.* 46. 4. 18. 1. This is the kind mentioned in Bracton. *Omne quod tibi debui ex quacunque causa, habesne acceptum?* (Do you consider everything that I have owed you, on whatever account, as received?) To which the answer

was, by word or writing, *Habeo, acceptum-que fero*; (I hold it so, and put it down as received.) *Bract.* fol. 101 a. *Fleta*, lib. 2, c. 60, § 11. The last clause in this example shows the etymology of the word; (*latio*, from *ferre*.) It was sometimes written as two words, *accepti latio*. *Fleta*, *ubi supra*.

Acceptilation is used in modern civil law, and in Scotch law. *Bell's Dict.* It is also used as an ordinary English word, by some of the old writers. *Richardson's Dict.*

ACCEPTOR. L. Lat. In mediæval law. A hawk. *L. Salic.* tit. 7, § 1. *L. Ripuar.* tit. 36, § 11. *Spelman*.

ACCEPTOR. In mercantile law. The party who accepts a bill of exchange, and who is the principal debtor, the drawer being the surety. 3 *Kent's Com.* 75, 86. See *Acceptance*.

ACCESS. [Lat. *accessus*, q. v.] Approach, or means of approach; opportunity of intercourse, as between husband and wife. 1 *Bl. Com.* 457.

Actual intercourse. *Sugd. Prop.* 182.

ACCESSARIUS. Lat. In old pleading. Accessory; an accessory. *Towns. Pl.* 49. See *Accessorius*.

ACCESSARY. [L. Lat. *accessarius*.] In criminal law. One who, without being present at the commission of a felonious offence, becomes guilty of such offence, not as a chief actor, but as a participator, as by command, advice, instigation or concealment, either before or after the fact or commission; a *particeps criminis*. 4 *Bl. Com.* 35. *Cowell*. See *infra*.

ACCESSARY BEFORE THE FACT. In criminal law. One who, being absent at the time a crime is committed, yet procures, counsels, or commands another to commit it; and, in this case, absence is necessary to constitute him an accessory, for if he be present at any time during the transaction, he is guilty of the crime as principal. *Plowd.* 97. 1 *Hale's P. C.* 615, 616. 4 *Steph. Com.* 90, note (n.) Thus, if A. advises B. to kill another, and B. does it in the absence of A., in this case B. is principal, and A. is accessory in the murder. 4 *Bl. Com.* 37.

ACCESSARY AFTER THE FACT. [L. Lat. *accessarius ex post facto*,—*post effectum scelus*. *Spelman*.] In criminal law. One who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon. 1

Hale's P. C. 618, 622. *Hawk. P. C.* b. 2, c. 29, a. 32. And generally, any assistance whatever, given to a felon, to hinder his being apprehended, tried or suffering punishment, makes such assistor an accessory; as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force and violence to rescue him. *Hawk. P. C.* b. 2, c. 29, ss. 26, 27, 28. 1 *Hale's P. C.* 620, 621. 4 *Bl. Com.* 38. 4 *Steph. Com.* 91. 2 *N. Y. Rev. Stat.* [699,] 583, § 7.

ACCESSEMENT. L. Fr. [Lat. *accessio*.] Addition. *Kelham*.

ACCESSIO. Lat. [from *accedere*, to go to or with; to be added to; to belong to.] In the civil law. Accession; a going or passing of one thing to, or with another as its principal; addition or adjunction; an addition, or increase.* That mode of acquiring property by which according to the rule, *Res accessoria sequitur rem principalem*, (an accessory thing follows the principal thing,) or *credit rei principalis*, (belongs to the principal thing,) the proprietor of the principal thing becomes, *ipso jure*, proprietor of all that belongs to it, [or is added to, or connected with it,] as an accessory thing; whether such addition be by its own increase, as the fruits of the earth, the young of animals; or the operation of natural causes, as the gradual deposit, (*alluvio*), made upon land by a stream; or by the voluntary act of another uniting his property with it, (*adjunctio*;) as by the interweaving of materials, welding of iron, painting on another's tablet, writing on his parchment, building or planting on his soil; or by the mixing together of things dry, (*commixtio*), or liquid, (*confusio*.) *Inst.* 2. 1. 26—38. *Dig.* 6. 1. 23. *Id.* 41. 1. 7. *Id.* 41. 1. 26. *Id.* 44. 3. 14. *Bract.* fol. 9 a. 10 a. 1 *Mackeld. Civ. Law*, 279—285, §§ 266—270. See *Adjunctio*. The mode of acquisition by transforming a thing belonging to another, especially by working up his material into a new species, as grapes into wine, was called *specificatio*, and was distinguished from *accessio*, properly so called. 1 *Mackeld. Civ. Law*, 277, § 265. See *Specificatio*.

A thing joined or added to another thing. *Calv. Lex*. The Romans did not use the word *accessio* to denote the title arising from the addition of one thing to

another, but understood by it the thing itself which comes to be joined to another. 1 *Mack. Civ. Law*, 279, § 266, note (d.) *Id.* 155, § 153.

An incident or appurtenant to another thing. *Dig.* 34. 2. 19. 13.

The profit, fruit, or increase of a thing. More commonly used in the plural, (*accessiones*.) *Dig.* 22. 1.

An incidental or auxiliary obligation, as that of a surety. *Calv. Lex*.

A party contracting such obligation. *Id.* *Brissonius*.

ACCESSION. [Lat. *accessio*, q. v.] A species of title by which a person acquires a right to, or property in a thing, in consequence of its *belonging* to another thing; as by growing out of it, or being added to, or combined with it.* See *Accessio*. A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another,) even where such addition extends to a change of form or materials: and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor, is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape.* 2 *Kent's Com.* 360—365. *Bract.* fols. 9, 10. *Code Civil*, Nos. 546, 547. *Civil Code of Louisiana*, Art. 490. *Schmidt's Civ. Law*, 48, 49. 3 *Comstock's R.* 379, and authorities cited *ibid.* See *Accessio*.

ACCESSION, Deed of. In Scotch law. A deed executed by the creditors of a bankrupt or insolvent debtor, by which they approve of a trust given by their debtor for the general behoof, and bind themselves to concur in the plans proposed for extricating his affairs. *Bell's Dict.*

ACCESSORIUM. Lat. [from *accedere*, to go to, or with.] In the civil law. An accessory thing; an incident; a thing which goes with another thing; a thing which belongs to, is connected with, or dependent upon another thing, as its principal, (*res principalis*.)* *Calv. Lex.* *Cowell.* *Bract.* fol. 22 b. *Fleta*, lib. 4, c. 22, § 1.

Accessorium non ducit sed sequitur suum principale. The incident does not draw,

but follows its principal. *Co. Litt.* 152 a. 151 b. *Broom's Max.* 203. [368.] The incident passes by the grant of the principal, as rent by the grant of a reversion, and not *è converso*. 2 *Bl. Com.* 176. *Accessorium sequitur principale.* *Bell's Dict.* 6 *Bell's (Scotch) Appeal Cases*, 222.

ACCESSORIUS. L. Lat. [from *accedere*, q. v.] In the civil law. Accessory, incident; belonging to something else. *Res accessoria*; an accessory thing. 1 *Mackeld. Civ. Law*, 155, § 152. See *Accessorium*.

ACCESSORIUS. L. Lat. [from *accedere*, q. v.] In old English law. An accessory, or accessary. *Spelman.* *Accessorius sequitur naturam sui principalis.* An accessory follows the nature of his principal. 3 *Inst.* 139. An accessory cannot be guilty of a higher crime than his principal. *Broom's Max.* [374.]

Accessorius sequitur principalem. An accessory follows, or depends upon the principal. 4 *Co.* 44. Where there is no principal, there can be no accessory.

ACCESSORY. [L. Lat. *accessorius*, *accessorium*, qq. v.] Incident, appurtenant, or belonging to. Things accessory are of the nature of the principal. *Finch, Law*, b. 1, c. 3, num. 25. *Wingate's Max.* 226, max. 64. *Accessory* is sometimes used in this sense. *Story, Bailm.* § 54.

An incident; a thing belonging to another thing. When a subject is conveyed, every one of its accessories are understood to be conveyed with it, unless the contrary be expressed. 1 *Kames' Equity*, 240.

ACCESSORY. In criminal law. Contributory to, or aiding in the commission of a crime. Called in the Roman law, *ope et consilio*, and in the Scotch law, *art and part*. (qq. v.) *Ersk. Inst.* b. 4, tit. 4, § 10. More commonly written *accessary*, especially when used as a substantive. See *Accessory*.

ACCESSORY ACTION. In Scotch practice. An action which is subservient or auxiliary to another. Of this kind, are actions of "proving the tenor," by which lost deeds are restored; and actions of "transumps," by which copies of principal deeds are certified. *Bell's Dict.*

ACCESSORY CONTRACT. In the civil law. A contract which is incident or auxiliary to another or principal contract; such as the engagement of a surety.

Pothier, Oblig. part 1, ch. 1, sect. 1, art. 2.

ACCESSORY OBLIGATION. In the civil law. An obligation which is incident to another or principal obligation; the obligation of a surety. *Pothier, Oblig.* part 2, ch. 1, § 6. The term is used in Scotch law. *Bell's Dict.*

ACCESSUS. Lat. [from *accedere*, to go to.] In old English law. Access, approach, admission, ingress; the liberty of going into a place. *Accessus et recessus*; the liberty of going on and off another's land, for the purpose of hunting, drawing water, &c. *Bract.* fol. 231 b. 232. *Fleta*, lib. 4, c. 27, § 1. The same liberty, as applied to the enjoyment of a right of common, was called *ingressus et egressus*, ingress and egress; a phrase still in use. *Id. ibid.* *Bract. ubi supra.* See *Ingress*, *Egress*.

ACCIDENS. Lat. [from *accidere*, to fall, to happen.] In the civil law. An accident; a thing happening; an event or circumstance. *Calv. Lex. Spiegelius.*

ACCIDENT. [Lat. *accidens*, from *accidere*, q. v.] A casualty; an act of providence; an event that takes place without one's foresight or expectation. See *Inevitable accident*, *Act of God*, *Casualty*.

In equity. Any such unforeseen event, misfortune, loss, act or omission, as is not the result of any negligence or misconduct.* 1 *Story's Eq. Jurispr.* § 78. According to Mr. Spence, "every attempt to define accident in its judicial acceptation, has failed." 1 *Spence's Ch.* 628.

ACCIDERE. Lat. [from *ad*, to, and *cadere*, to fall.] In the civil law. To happen; to fall; to take place. *Ea quæ raro accidunt non temere in agendis negotiis computantur.* Things which rarely happen are not [to be] rashly [or inconsiderately] taken into account, in the transaction of business. *Dig.* 50. 17. 64.

To happen to; to befall; usually in a bad sense. *Calv. Lex.* An euphemism to express death. *Id.*

ACCION, Accyoun. L. Fr. An action. *Kelham.* *Accion sur le cas*; an action on the case.

ACCIPERE. Lat. [from *ad*, to, and *capere*, to take.] In the civil law. To receive; to take, especially under a will. *Brissonius.* Distinguished from *capere*, (q. v.) *Dig.* 50. 16. 71.

To admit; to acknowledge. *Calv. Lex. Brissonius.*

To receive; to sustain, as an injury. *Id.*
To take; to understand; to construe. *Id.*

ACCO. L. Lat. An abbreviation of *actio*. *Towns. Pl.* 26. *Acconem*, of *actionem*. *Id.* 166, 167.

ACCOLA. Lat. [from *ad*, by, and *colere*, to dwell.] In the civil law. One who inhabits or occupies land near a place, as one who dwells by a river or on the bank of a river. *Dig.* 43. 13. 3. 6.

In feudal law. A husbandman, an agricultural tenant; a tenant of a manor. *Spelman.* A name given to a class of villeins in Italy. *Barringt. Obs. Stat.* 302.

ACCOMMODARE. Lat. [from *ad*, to, and *commodum*, benefit.] In the civil law. To accommodate; to allow, against strict rule, (*contra summi juris regulam*;) to grant or transfer as a matter of favor rather than right. *Calv. Lex.* Actions and exceptions which were granted by the prætor, *ex æquo et bono*, were said *accommodari*. *Dig.* 2. 11. 2. 8.

To lend, or loan. *Si tibi vendam quod tibi accommodavi*; if I sell you that which I have loaned to you. *Bract.* fol. 41 a.

ACCOMMODATION PAPER. In mercantile usage. A bill or note drawn, accepted, or endorsed by one person for another, there being no consideration between them, for the sole purpose of raising money upon it, for the accommodation of one or both of them.* *Story on Bills*, § 187. See 12 *M. & W.* 705. 1 *Id.* 212. It is distinguished from business paper. 6 *Ohio St. R.* 37. Accommodation paper in the hands of *bona fide* holders, is now governed by the same rules as other paper. 3 *Kent's Com.* 86, and note, *ibid.* The parties to every accommodation bill hold themselves out to the public, by their signatures, to be absolutely bound to every person who shall take the same for value, to the same extent as if that value were personally advanced to them, or on their account and at their request. *Story on Bills*, § 191. And see *Id.* §§ 192, 193.

ACCOMPLIAMENTUM. L. Lat. In old pleading. Accomplishment. *Co. Entr.* 227. *Towns. Pl.* 49.

ACCOMPLICE. [from *ad*, to, and *complicare*, to fold up, or wrap together.] In criminal law. One who is joined or united with another; one of several concerned in a felony; an associate in a crime; one who co-operates, aids, or assists in committing

it. *Tomlins. Jacob*. This term includes all the *participes criminis*, whether considered in strict legal propriety as principals, or as accessories. 1 *Russell on Crimes*, 26. It is generally applied to those who are admitted to give evidence against their fellow criminals. 4 *Bl. Com.* 331. *Hawk. P. C. b. 2, c. 37, § 7*.

ACCOMPT. See *Account*.

ACCORD. Fr. & Eng. An agreement, consent, or concurrence. An agreement between a party injuring and a party injured, to make satisfaction for the injury; which, when performed, is a bar of all actions upon this account.* 3 *Steph. Com.* 373. As if a man contract to build a house, or deliver a horse, and fail in it, this is an injury for which the sufferer may have his remedy by action; but if the party injured accepts a sum of money, or other thing as a satisfaction, this is a redress of that injury, and entirely takes away the action. 9 *Co. 79*. 3 *Chitty's Bl. Com.* 16, and note. *Blount. Bac. Abr. Accord. Com. Dig. Accord. U. S. Dig. Accord and satisfaction*. Defined by Finch, "an agreement between the parties themselves, upon a satisfaction executed." *Law, b. 2, c. 19*.

ACCORD, abbr. of *Accordant*, (q. v.) Agreeing, agreed. "Denison, J. *accord*." 1 *W. Bl.* 418.

To ACCORD. In practice. To agree or concur, as one judge with another. "I accord." *Eyre, C. J. 12 Mod. 7*. "The rest accorded." 7 *Id.* 360.

ACCORDANT. Fr. & Eng. Agreeing; concurring. "Baron Parker, *accordant*." *Hardr.* 93. "Holt, C. J. *accordant*." 6 *Mod.* 298, 299. "Powys, J. *accord*." "Powell, J. *accord*." *Id. ib.*

ACCOUNT, *Accompt*. [L. Lat. *computus, computus*, from *computare*, to account.] In practice. A writ, or action at common law, (sometimes called *account render*), which lies against a person who by reason of his office, or business, as bailiff, receiver, or guardian, ought to render an account to another, but refuses to do so. *F. N. B.* 116. *P. Q. Co. Litt.* 172. The writ in this action (which is termed in the old books, *breve de computo*, or *compoto*), commands the defendant to render a reasonable account (*rationabile computum*, or *rationabilem compotum*), to the plaintiff, or show the court good cause to the contrary. *Fleta*, lib. 2, c. 70. *Reg. Orig.* 135. *F. N. B.* 116, 117. If the plaintiff succeeds, there

are two judgments; the first is that the defendant *do account*, (*quod computet*), before auditors appointed by the court, and, when such account is finished, then the second judgment is that he *do pay* the plaintiff so much as he is found in arrear. 3 *Bl. Com.* 162.

* * The action of account was formerly the common remedy in mercantile transactions, and in almost all cases where there were dealings, and an unliquidated demand. 3 *Reeves' Hist. Eng. Law*, 77. In modern practice it has fallen into great disuse, in consequence of the substitution of the action of assumpsit, and the frequent resort to a court of equity. 3 *Bl. Com.* 163. 1 *Tidd's Pr.* 1, 2. 1 *Archb. N. Prius*, 196, 197. It seems, however, to have always been regarded with favor by the English judges, and in the case of *Godfrey v. Saunders*, in the C. B., where an action of this kind was brought, Lord C. J. Wilmot expressed his satisfaction at seeing it revived. 3 *Wils.* 94, 117. Latterly it has been revived in England to a considerable extent, in consequence of a decision of the court of exchequer, in relation to the exception of merchants' accounts in the statute of limitations. 8 *Mees. & W.* 769. *Smith on Contracts*, 301, 302, 321, and notes. It is retained in the practice of some of the United States, but its form has been modified, and, in general, it is rarely resorted to: in some of the states it has been expressly abolished. 4 *Ken's Com.* 359, note. 1 *Story's Eq. Jur.* § 442, and note. *Rev. Stat. of N. Jersey*, 46. *Rev. Stat. of Vermont*, 219, c. 36. 25 *Vermont R.* 340. *Rev. Stat. of Mass.* c. 118, § 43. *Purdon's Digest, Account*. See *United States Digest, Account render*.

ACCOUNT. A statement in writing, of debts and credits, or of receipts and payments; a list of items of debts and credits, with their respective dates.* 5 *Cowen's R.* 593.

The word *account* has been said to have no definite legal meaning. *Id.* 588, 593. "Any thing may enter into an account." *Sanford, C. Id.* 593.

ACCOUNT CURRENT. A running, or open account. See *Account stated*.

ACCOUNT STATED. An account balanced and rendered, with an assent to such balance, express or implied. *Parker, C. J.* 8 *Pick. R.* 187, 193. 1 *Kernan's R.* 170. An account current sent by a foreign merchant to a merchant in this country, and

not objected to for two years, is deemed an account stated, and throws the burden of proof upon him who received and kept it without objection. 7 *Cranch*, 147. 25 *Mississippi R.* 267. But an account closed by the cessation of dealings between the parties, is not an account stated. 5 *Cranch*, 15. 8 *Pick. ub. sup.* See *Insimul computassent*. To make an account stated, it is sufficient that the account has been examined, and assented to, as correct, by both parties. This assent may be express or implied from circumstances. Whether, on a given state of facts, the transaction constitutes a stated account, is a question of law. 1 *Kernan's R.* 170. And see 26 *Mississippi R.* 212. 22 *Penn. St. R.* 427.

ACCOUNTANT. A person skilled in accounts.

A person whose business or duty is to keep accounts.

A person who renders an account in a particular case; a party accounting.

ACCREDIT. [Fr. *accréditer*, from Lat. *ad*, to, and *credere*, to believe or trust.] In international law. To give credit to; to express confidence in; to acknowledge the authority of. To acknowledge the authority of a diplomatic agent of another government; to receive him in his public character, and give him credit and rank accordingly.

ACCREDULITARE. L. Lat. In old records. To purge an offence by oath. *Blount. Whishaw.*

ACCRESCE. In Scotch law. To accrue. 1 *Kames' Equity*, 247. See *Accrescere*.

ACCRESCEERE. Lat. [from *ad*, to, and *crescere*, to grow; L. Fr. *accresser*.] In the civil and old English law. To grow to; to pass to and become united with, as soil to land *per alluvionem*. *Dig.* 41. 1. 30, pr. *Id.* 41. 1. 56, pr.

To pass or be added to a person; to accrue. In Scotch law, literally translated "*to accresce*." 1 *Kames' Equity*, 247. *Jus accrescendi*; (q. v.) the right of accretion, or accruer, the right by which a thing passes or accrues from one to another, especially from a deceased person to those who survive him; hence called the right of survivorship. *Pars decedentis accrescere debet superstitibus, per jus accrescendi*; the portion of the deceased ought to accrue to the survivors by the right of accruer, or survivorship. *Bract.* fol. 28. See *Id.* fol. 77 b. 262 b.

To accrue; to grow or arise; to begin to have existence. *Actio non accrevit infra sex annos*; (q. v.) the action did not accrue within six years. 3 *Chitt. Pl.* 941.

ACCRESSER. L. Fr. To increase, or accrue. *Kelham.* See *Accrescere*.

ACCRETION. [Lat. *accretio*, from *acrescere*, to grow to.] A growing to, adding to, increasing. Most commonly applied to the gradual and imperceptible accumulation and formation of soil, or land, out of the sea, or a river. 3 *Kent's Com.* 428. *Schmidt, Civ. Law*, 49. See *Alluvion*.

ACCROACH, Accroche. [Fr. *accrocher*, *acrocher*, q. v.] In old English law. To attempt to exercise. 4 *Bl. Com.* 76. 1 *Hale's P. C.* 80. 2 *Reeves' Hist. Eng. Law*, 451. 3 *Id.* 186. *Accroaching* of royal power was a usual charge of high treason anciently, though a very uncertain charge. 1 *Hale's P. C. ub. sup.* *Encroaching* is used in the articles against the Archbishop of York and others, A. D. 1388. 1 *How. St. Trials*, 101, 102.

To exercise without authority; to usurp authority. *Stat. 13 Ric. II. st. 1.* 3 *Reeves' Hist. Eng. Law*, 197.

To delay. See *Accrocher*.

ACCROCHER, Acrocher. L. Fr. In old English law. To pull or draw to, as with a hook; to accroach. *Ou home accroche a lui si vite*; where a man draws to himself suit. *Yearb. M.* 4 Edw. II. 88.

To usurp; to attempt to exercise. *Kelham.*

To delay. *Accrocher un proces*; to stay a process or the proceedings in a suit. *Cowell. Blount.*

ACCURUE. [Lat. *accrescere*.] To grow to, to follow, to be added to; as a thing or right passes from one person to another. See *Accrescere*.

To grow, arise, accumulate, or become due; as rent or interest.

To arise, or begin to have a legal existence; as an action *accrues* when the plaintiff has a right to commence it. See *Accrescere*.

ACCUMULATIVE. [from Lat. *accumulare*, from *ad*, to, and *cumulus*, a heap.] That accumulates, or is heaped up; additional. Said of several things heaped together, or of one thing added to another. See *infra*.

ACCUMULATIVE JUDGMENT. In criminal practice. A second or additional judgment or sentence given against or

passed upon one who has already been convicted, to go into effect after the expiration of the first. *Wharton's Lex.*

ACCUMULATIVE LEGACY. A double or additional legacy; a legacy given in addition to another given by the same instrument, or by another instrument. 4 *Vesey*, 90. 1 *P. Wms.* 424.

ACCUSARE. Lat. To accuse; to charge with some offence. *Calv. Lex. Cod.* 9. 1. *Accusare nemo se debet nisi coram Deo.* No man is bound to accuse himself, unless before God. *Hardr.* 139.

ACCUSATION. [Lat. *accusatio*, from *accusare*, q. v.] In criminal law. The act of charging with a crime or offence. A statement made before a competent magistrate or judge, charging a named person with the commission of some crime or offence. *Calv. Lex. voc. Accusatio.*

ACCUSATOR. Lat. [from *accusare*, q. v.] An accuser. *Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit.* An accuser is not to be heard after a reasonable time, unless he excuse himself satisfactorily for the omission. *Moor*, 817.

"**ACCUSTOMED RENT,**" in the stat. 13 Eliz. c. 10, ought to be understood of the rent reserved in the last lease, and not upon the first, for that rent having been altered since, cannot be called the accustomed rent. *Hale*, C. B. *Hardr.* 325. 2 *Vern.* 540.

ACCUSTOMATUS, Accustomatus. L. Lat. In old pleading. Accustomed. *Co. Entr.* 69. *Rast. Entr.* 657. *Towns. Pl.* 26, 49.

ACENSEMENT. L. Fr. A letting to farm. *Kelham.*

ACENSEUR. L. Fr. A farmer. *Kelham.*

ACEPHALI. Græco-Lat. [Gr. ἀκεφαλοι, from α, without, and κεφαλη, a head.] Persons without a head or superior. In the civil law, a sect of religious persons, enumerated among heretics, in *Nov.* 109, pr. and *Nov.* 115, c. 3, § 14. See also *Cod.* 1. 5. 19. Otherwise called *Acephalitzæ*. So termed, according to Calvin, because their head or founder was unknown, or because they acknowledged no religious superiors, (bishops, presbyters and councils.) *Calv. Lex.* The word was used in a similar sense in the time of Charlemagne. *Synod. Mogunt. sub Carol. M.* cap. 22, cited in *Spelman.*

In feudal law. Persons without a feudal

superior; persons who held of no one, as their lord. *Baronum homines, et acephalos.* *LL. Hen.* I. c. 22, cited in *Spelman.* This is probably the passage referred to in Cowell, (additions in the ed. of 1701,) as descriptive of a class of levellers who acknowledged no head or superior.

ACER. L. Lat. In old English law. An acre. *Spelman.* See *Acra.*

ACERES. L. Fr. Maple trees. *Kelham.*

AC ETIAM. L. Lat. And also. The name of a clause in a *capias ad respondendum*, so called from its initial words. See *Ac etiam billæ.* Anciently sometimes written as one word, *acetiam*, and *aceciam.* *Towns. Pl.* 49. 2 *Str.* 922.

AC ETIAM BILLÆ. L. Lat. And also to a bill. The initial words of a clause inserted in a writ of *capias ad respondendum*, where bail is required, in order to express the true cause of action; the writ requiring the defendant "to answer the plaintiff of a plea of trespass; And also to a bill of the plaintiff" against the defendant, for whatever the real cause of action may be. 3 *Bl. Com.* 288. *Id.* Appendix, No. III. sect. 3. See *Capias ad respondendum.* This clause is now dispensed with, in the process of the English courts. *Stat.* 2 Will. IV. c. 39. See *Bill.*

ACHATA. L. Lat. [from Fr. *achate*, q. v.] In old English law. A purchase. *Mag. Rot. Pip.* 1 Hen. II. rot. 14, m. 2. *Spelman.*

ACHATE, Achat, Achet, Acate. L. Fr. [from *achater*, to buy.] In old English law. Purchase; a purchase, contract or bargain. *Bro. Abr. Contract. Per colour de achate*; by color of purchase. *Stat. Westm.* I. c. 1.

Bought. *Achate arere*; bought back. *Dyer*, 35 b, (Fr. ed.)

ACHATER, Acater. L. Fr. To buy. *Si le villeine achate biens*; if the villein buy goods. *Litt.* sect. 177.

ACHATOR, Achatour, Achetour, Acatour. L. Fr. [from *achater*, to buy.] In old English law. A buyer; a contractor. Purveyors were, by statute 36 Edw. III. st. 1, c. 2, ordained to be thereafter called *achetours*, or buyers; the name of *purveyor* being declared by the statute to be an odious one. *Barringt. Obs. Stat.* 389. 2 *Reeves' Hist. Eng. Law*, 370. *Parnours, purveyours, ou achetours*; takers, purveyors or buyers. *Artic. sup. Chart.* c. 2.

ACHERSET. [L. Lat. *achersetus.*] An ancient measure of corn or grain, supposed

to have been the same with the quarter, or eight bushels. *Cowell*.

ACHESON, *Achaysson*. L. Fr. Reason, occasion, cause, hurt. *Kelham*. See *Encheson*.

ACHEVER. L. Fr. To attorn. *Kelham*.

ACIA, *Acyā*. L. Lat. In old English law. Malice, hate or hatred. *Fleta*, lib. 1, c. 25, § 5. *Id.* c. 26, § 3. See *Atia*.

ACLEA. L. Lat. [from Sax. *ac*, oak, and *lea* or *lega*, field.] In old English law. A field or place where oaks grow; an oak-ground, (*quercetum*.) *Florent. Wigorn.* A. D. 851. *Spelman*.

ACKNOWLEDGMENT. In conveying. The act by which a party who has executed an instrument, declares or acknowledges it before a competent officer, to be his, or her act and deed.

The certificate of the officer on such instrument that it has been so acknowledged. Both these are usual requisites to entitle an instrument to be recorded.

ACKNOWLEDGMENT MONEY. A sum of money paid by copyhold tenants, in some parts of England, on the death of their landlords, as an acknowledgment of their new lords. *Cowell. Blount. Holthouse*. The same with the Lat. *laudemium*, (q. v.)

ACOIGNE. L. Fr. Favor; association. *Kelham*.

ACONE. L. Fr. Some. A corrupted form of *aucun*. *Acone fei*, sometimes. *Kelham*.

ACORD, *Acort*. L. Fr. Agreement, accord, consent. *Kelham*.

ACOLUPER. L. Fr. To accuse. *Kelham*. *Acupes*; accused. *Id.*

ACQUEST. [L. Lat. *acquisitum*, q. v.] In old English law. An estate newly acquired, or acquired by purchase. 1 *Reeves' Hist. Eng. Law*, 29. See *Conquest*.

Acquisition. Used in this sense by Sir Matthew Hale. *Hale's Anal.* sect. iii. xxxiii. xxxiv.

ACQUETS. Fr. In the civil law. Property which has been acquired by purchase, gift, or otherwise than by succession. *Bouvier*.

Profits, or gains of property, as between husband and wife. *Civil Code of Louisiana*, § 2369.

ACQUIESCE. [from Lat. *acquiescere*, from *ad*, to, and *quiescere*, to be quiet, from *quies*, rest.] To rest satisfied or apparently satisfied; to rest without objection, opposition or dissent.* *Webster*.

ACQUIESCENCE. [from *acquiesce*, q.

v.] A resting quiet or satisfied, without objection, opposition or dissent; omission to say or do any thing expressive of dissatisfaction or disapproval.

ACQUIETANTIA, *Acquietancia*. L. Lat. [from *acquietare*, q. v.] In old English law. An acquittance; a release or discharge from the obligation of a debt or contract, (*solutio a vinculo debiti, stipulationis, vel obligationis, quo quis alteri tenetur*.) *Spelman*.

The instrument itself, (*symbolum ipsum*), by which such discharge is effected. *Id.* Sometimes called *litera acquietantie*; a letter of acquittance. *Reg. Orig.* 150.

Exemption or freedom from a service or duty. *Consuetudines et servitia de quibus illi nunquam acquietantiam habuerint*; customs and services from which they never had acquittance. *Bract.* fol. 27 b. *Acquietancia de shiris et hundredis*; the privilege of being free from suit and service in shires and hundreds. *Cowell*.

ACQUIETARE. L. Lat. [from *ad*, to, and *quietare*, to discharge; *quietum reddere*, to make quit, or quiet, i. e. content, or free from molestation; to give quiet, or keep in quiet, so that one may have no cause for further or future apprehension; to put at rest.] In old English law. To acquit; to discharge or release from a debt. *Spelman*, voc. *Acquietantia*. *Quod acquietet B. de viginti solidis*; that he acquit B. of twenty shillings. *Reg. Orig.* 158 a.

To acquit; to pronounce, or declare innocent of a crime or charge. See *Acquietatus*, *Acquit*.

To keep quiet, or quit; to preserve or protect from molestation, as from demands for services not due. *Acquietabimus*, (we will acquit,) was one of the formal words in the clause of warranty, with which the old charters concluded. By this word, the donor bound himself and his heirs to acquit the tenant, if any one should demand more or different service than what was contained in the charter. *Bract.* fol. 37 b. *Warrantizare, acquietare et defendere*; to warrant, acquit and defend. *Id.* fol. 30 a.

ACQUIETATUS. L. Lat. [from *acquietare*, q. v.] In old English law. Acquitted; discharged; released from a criminal charge; pronounced innocent by a jury. *Reg. Orig.* 134. 9 *Co.* 56. *Cro. Car.* 420. This word had the peculiar meaning of a discharge by a jury, (*per pais*), from a very early period. *Reg. Orig.* 134 b, nota.

ACQUIRE. [from Lat. *acquirere*, q. v.] To get or gain by some lawful title; to make one's own according to some rule of law. See *Acquirere*.

ACQUIRERE, Adquirere. Lat. [from *ad*, to, and *querere*, to seek.] In the civil law. To acquire; to gain by some lawful title; to make one's own, (*suum facere*), according to some rule of law, (*jure aliquo*.) *Calv. Lex. Inst.* 2. 1. pr. *Dig.* 41. 1. 7. 1, *et passim*. It was distinguished from *nancisci* and *adipisci*, to get or obtain. *Calv. Lex.* The title *De acquirendo rerum dominio* was a fundamental one in the Roman law. *Dig.* 41. 1. See *Cod.* 7. 32.

ACQUISITION. [Lat. *acquisitio*, from *acquirere*, q. v.] The act of acquiring; the act of gaining by some lawful title; the act of making a thing one's own according to some rule of law.

ACQUISITUM, Adquisitum. L. Lat. [from *acquirere*, to acquire, or purchase.] In old English law. A purchase. 2 *Mon. Angl.* 380. *Towns. Pl.* 50.

Acquest, or newly acquired feudal rights. 1 *Reeves' Hist. Eng. Law*, 29. See *Conquest*.

ACQUISSER. L. Fr. To receive, to gather. *Kelham*.

ACQUIT. [L. Fr. *acquiter*, *quiter*; L. Lat. *acquietare*, q. v.] To free, clear or deliver from accusation. See *Acquittal*.

To discharge from obligation, properly in writing. See *Acquittance*.

To protect from molestation, or trouble. In the old common law, to see that a tenant be safely kept from any entries, or other molestation, for any manner of service issuing out of land, to any lord that is above the meane. *Co. Litt.* 100 a. *Litt.* sect. 142.

ACQUITTAL, Acquital. In criminal practice. A judicial deliverance from an accusation of guilt; a deliverance or setting free from a criminal charge by the process of a trial at law, and the verdict of a jury, pronouncing the party not guilty.* 4 *Bl. Com.* 361. 1 *Nev. & Man.* 36. See *Acquietatus*.

In old English law. Exemption from entry and molestation by a superior lord, for services issuing out of lands. *Co. Litt.* 100 a. *Cowell*. See *Acquietantia*.

ACQUITTANCE. [L. Lat. *acquietantia*, q. v.] A discharge in writing, of a sum of money, or debt due, duty agreed to be performed, or any other obligation. *Spelman*, voc. *Acquietantia*. *Cowell*. *Termes de la Ley*. *Shep. Touchst.* 347.

Applied as well to the act, as to the instrument by which it is effected. See *Acquietantia*, *Receipt*, *Release*.

ACRA. [pl. *acræ*.] L. Lat. In old English law. An acre. *Spelman. Fleta*, lib. 2, c. 71, §§ 3, 4, 5. *Co. Litt.* 5 b. *Towns. Pl.* 26, 196. In *Bokenhale*, *duas carucatas terræ, et dimidiam, et 26 acras prati, et 50 acras silvæ, et 70 acras de brushe*. In *Bokenhale*, two carves and a half of arable land, and twenty-six acres of meadow, and fifty acres of wood, and seventy acres of brush. *Charta Edredi Regis*, A. D. 948. *Spelman. Do tibi decem acras in tali loco*; I give you ten acres in such a place. *Bract. fol.* 16 a. See *Ager*.

ACRE. [Lat. *jugerum*; L. Lat. *acra*, *acer*, from Sax. *æcer*, from Lat. *ager*, a field. *Spelman*.] A measure of land containing forty perches in length, and four in breadth; or according to that proportion, be the length more or less; making an area of one hundred and sixty perches. *Ord. de Admens. Terræ*, 35 Edw. I. st. 1. *Stat.* 24 Hen. VIII. c. 4. *Crompt. Jurisd.* 222. *Cowell. Stat.* 5 Geo. IV. c. 74. Declared by statute, in New-York, to be equal to a rectangle sixteen perches in length and ten in breadth, making the same area. 1 *N. Y. Rev. Stat.* [607.] 617, § 7. See *Sergeant's Land Laws*, 185. See *Perch*.

* * * Originally the word *acre*, (*acer*, *aker*, or Sax. *æcer*,) was not used as a measure of land, or to signify any determinate quantity of land, but to denote any open ground, (*latum quantumvis agrum*,) wide campaign, or field; which is still the meaning of the German *acker*, derived probably from the same source, and is preserved in the names of some places in England, as *Castle Acre*, *South Acre*, &c. *Spelman*. See *Acrefight*. When the word came to be applied as a measure of ground, the quantity denoted by it was still various, until determined by the English statutes above referred to. *Kennett's Paroch. Ant.* 534. *Cowell*. And even after the establishment of a standard acre, customary acres continued to be used in different parts of England, varying greatly from each other and from the standard. Thus, in the case of *Barksdale v. Morgan*, (in the C. B., E. T. 5 W. & M.) the common acceptance of the word *acre* in Cornwall was said by the court to amount to as much as a hundred of other counties. 4 *Mod.* 186. And see *Yearb.* T. 3 Edw. II. 98. But these customary measures were finally abol-

ished by stat. 5 Geo. IV. c. 74. *McCulloch's Dict.* At the great Domesday inquisition, the common pasture in England seems to have been measured by *hides*, the arable land by *carucates*, or *carves*, and the meadow by *acres*. *Cowell.* For the measure of the Scotch *aiker*, see *Skene de Verb. Sign. v. Particata.*

ACREFIGHT or **ACRE**. [Sax. *acerfeoght*, from *acer*, a field, and *feoght*, fight.] A camp or field fight: a sort of duel, or judicial combat, anciently fought by single combatants, English and Scotch, between the frontiers of the two kingdoms, with sword and lance. Called *campfight*, and the combatants *champions*, (L. Lat. *campiones*, from *campus*,) from the open field that was the stage of trial. *Cowell.*

ACRESCEER, *Acrescer*, *Acrescre*. L. Fr. To increase; to multiply; to advance or rise; to accrue. *Kelham.*

AC SI. Lat. As if. *Towns. Pl.* 23. 27. These words frequently occur in old English statutes. Lord Bacon expounds their meaning in the Statute of Uses: "The statute gives entry, not *simpliciter*, but within an *ac si*." *Bac. Read. Uses, Works*, iv. 195.

ACT. [Lat. *actum*, *actus*; from *agere*, to do; Fr. *acte*.] A thing done; a thing done by an ordinary human agent; the deed of an individual. See *Actus*, *Actum*.

A thing done by a superior power, such as the law, the Almighty; an event happening from the operation of such superior power. See *Act of God*, *Act of law*.

A thing done in writing, or evidenced by writing; a record or instrument, public or private.

A thing done, or business formally transacted by a public body, and always expressed in writing; especially, a legislative proceeding: a written law, formally ordained or passed by the legislative power of a state, called in England an *act of parliament*, and in the United States an *act of congress*, or of the *legislature*: a statute.* See 26 Penn. St. R. 450. See *Statute*.

A thing done by a court, and expressed in writing; an order of court, or other judicial proceeding.* See *Acta*. In Scotch law, the orders and decrees of a court, and in French and German law, all the records and documents in an action, are called *acts*. *Encyclop. Americ.* See *infra*.

A thing done in writing before a public officer, as a notary; the record of such a thing; a notarial, or other public instru-

ment.* *Poth. Oblig.* part iv. ch. 1, art. 1, sect. 1. See *Acta*, *Ab actis*.

Any instrument in writing to verify facts. *Webster.*

To **ACT**. In Scotch practice. To do or perform judicially; to enter of record. Surety "acted in the Books of Adjournal." 1 *Brown's R.* 4.

ACT. In Scotch practice. An abbreviation of *actor*, (proctor or advocate, especially for a plaintiff or pursuer,) used in records. "*Act. A. Alt. B.*" an abbreviation of *Actor*, *A. Alter*, *B.*; that is—for the pursuer or plaintiff, *A.*, for the defender, *B.* 1 *Brown's R.* 336, note. 2 *Id.* 144, note; 507, note.

ACT IN PAIS. L. Fr. & Eng. An act in the country, as distinguished from an act in court; an act which is not a matter of record, or done in a court of record. 2 *Bl. Com.* 294. *Story on Agency*, § 25, note. See *In pais*.

ACT OF BANKRUPTCY. An act done or suffered by a trader, tending to defraud his creditors, (as by endeavoring to avoid them, or evade their just demands,) by which he becomes a *bankrupt*, within the meaning of the bankrupt laws, and liable to be proceeded against as such. 2 *Bl. Com.* 477. See *Bankruptcy*, *Bankrupt*.

. In English law, the following acts, when committed by a person who *trades*, within the meaning of the bankrupt laws, are acts of bankruptcy: 1. Departing the realm: 2. Being out of the realm, and remaining abroad: 3. Departing from his dwelling house, or otherwise absenting himself: 4. Beginning to keep his house: 5. Suffering himself to be arrested for any debt not due: 6. Yielding himself to prison: 7. Suffering himself to be outlawed: 8. Procuring himself to be arrested: 9. Procuring his goods, money, or chattels, to be attached, sequestered, or taken in execution: 10. Making or causing to be made within the realm, or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels: 11. Making or causing to be made any fraudulent surrender of any of his copyhold lands or tenements: 12. Making or causing to be made any fraudulent gift, delivery or transfer of any of his goods or chattels. 2 *Steph. Com.* 196; and see *Id.* 197. *Wharton's Lex.*

The following acts were designated by the late bankrupt acts of the United States, as acts of bankruptcy: 1. Departing from

the state, district, or territory of which the trader is an inhabitant, with intent to defraud creditors: 2. Concealment to avoid being arrested: 3. Willingly or fraudulently procuring himself to be arrested, or his goods and chattels, lands or tenements to be attached, distrained, sequestered or taken in execution: 4. Removal or concealment of goods, chattels and effects, to prevent their being levied upon, or taken in execution, or by other process: 5. Making a fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, chattels, credits, or other evidences of debt. *Act of Congress*, August 19, 1841, § 1. *Owen on Bankruptcy*, 15—28.

ACT OF CONTRAVENTION. In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court. *Kames' Equity*, Pref. 1 *Id.* 228.

ACT OF CURATORY. In Scotch practice. The act extracted by the clerk, upon any one's acceptance of being curator. *Forbes' Inst.* part 1, b. 1, ch. 2, tit. 2. 2 *Kames' Equity*, 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

ACT OF GOD. [Lat. *actus Dei*; Fr. *Dieu son acte*.] Inevitable accident, or casualty; any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, an inundation, or earthquake; and also the sudden illness or death of persons. *Story on Bailments*, § 25. 2 *Bl. Com.* 122. *Broom's Max.* 108. 2 *Crabb's Real Prop.* 825, § 2176. Sir William Jones objects to the use of this phrase as made too familiar by habit, and as bordering on irreverence, and suggests the substitution of the expression *inevitable accident*. *Jones on Bailments*, 104. *Story on Bailments*, § 489.

ACT OF GRACE. In Scotch law. A term applied to the act of 1696, c. 32, by which it was provided that where a person imprisoned for a civil debt is so poor that he cannot aliment [maintain] himself, and will make oath to that effect, it shall be in the power of the magistrates to cause the creditor by whom he is incarcerated, to provide an aliment for him, or consent to his liberation; which, if the creditor delay to do for ten days, the magistrate is authorized to set the debtor at liberty. *Bell's Dict.*

ACT OF SETTLEMENT. In English law. The statute of 12 & 13 Will. III. c. 2,

by which the crown of Great Britain was limited to the present royal family. 1 *Bl. Com.* 128. 2 *Steph. Com.* 490.

ACT OF UNIFORMITY. In English law. The statute of 13 & 14 Car. II. c. 4, enacting that the book of common prayer as then recently revised, should be used in every parish church, and other place of public worship, and otherwise ordaining a uniformity in religious services, &c. 3 *Steph. Com.* 104.

ACT OF UNION. In English law. The statute of 5 Anne, c. 8, by which the articles of union between the two kingdoms of England and Scotland were ratified and confirmed. 1 *Bl. Com.* 97.

ACT BOOK. In Scotch practice. The minute book of a court. 1 *Swinton's R.* 81.

ACTA. Lat. [plur. of *actum*, q. v.] In the Roman and civil law. Acts, doings, transactions; especially those of which a record was or is kept.

The acts or proceedings of persons clothed with supreme authority, such as the sovereign, the legislative body; decrees; laws. The books, records or registers (*libri seu tabulæ*) of such acts. *Calv. Lex.*

The acts or proceedings of magistrates and public officers (things done by or before them,) of which a record was kept. *Id. Cod.* 1. 56. 2. Acts done, or contracts executed before notaries, of which a record is kept, are still sometimes called *acta*. In Louisiana, where a contract or other act is executed in a particular manner before a notary, the protocol, or original, remains in his possession *apud acta*, and the act is deemed what is technically called "an authentic act." *Story, J.* 9 *Peters' R.* 607, 625.

The acts or proceedings of courts of justice, of which a minute or record was kept. *Id. Dig.* 42. 1. 45. The minutes or records, (Gr. *ἀπομνημονεύματα*,) themselves. *Dig.* 42. 1. 46. *Cod.* 5. 50. 2. *Nov.* 47. *Brissonius. Actis insinuare*; to deposit among the records; to file. *Inst.* 4. 11. 3. *Acta sive irrotulationes*; acts or enrolments. *Bract.* fol. 1 b. *Extractum ex actis Curie Justiciarie*; extract from the minutes of the Court of Justiciary. 1 *Pitcairn's Crim. Trials*, part 1, p. 116. *Extractum de libris actorum Adjornalis*; extract from the books of minutes of Adjournal. *Id.* p. 118.

ACTA. Lat. [plur. of *actum*, q. v.] In old English law. Acts; actions; the acts

of individuals. *Acta exteriora indicant interiora secreta.* Outward acts indicate inward, or secret purposes. 8 Co. 290, 291. Or, in Bracton's language, *per exteriora presumi poterit de interioribus*; by outward acts we may judge of [presume, or infer,] inward motives, or designs. *Bract.* fol. 42 a. The law, in some cases, judges of a man's previous intentions by his subsequent acts. Thus, where an entry, authority, or license is given to any one by the law, and he abuses it, he shall be a trespasser *ab initio*; the law judging by the subsequent act, *quo animo*, or with what intent he entered. 8 Co. *ub. sup.* *Broom's Maz.* 139, [221.]

ACTA DIURNA. Lat. In the Roman law. Daily acts; the public registers or journals of the daily proceedings of the senate, assemblies of the people; courts of justice, &c. *Tacit. Annal.* v. 4; xii. 24; xiii. 31. Supposed to have resembled a modern newspaper. *Brand's Dict. Acta quotidiana.* *Cod.* 1. 55. 6.

ACTA PUBLICA. Lat. In the civil law. Public acts; things done and recorded before public officers, judges, notaries, &c. *Calv. Lex. Dig.* 27. 7. 43. *Cod.* 2. 1. 2.

Books and records containing the public acts, laws or statutes of a state. *Spiegelius. Oldendorpius.*

ACTILIA. L. Lat. In old Scotch law. Armor; weapons; harness. *Cum actiliis et harnesiis suis*; with their armor and harness. *Stat. 2 Rob. Bruce, c. ordinatum,* 27. *Skene de Verb. Sign.*

ACTIO. Lat. [from *agere*, q. v.] In the civil law. An action; the right of pursuing, or suing for what is due to one, in the peculiar mode or form termed in *judicio*, i. e. before a *judex*; (q. v.) or, in the later civil law, the right of pursuing one's due by process of law, or before a judicial tribunal. *Actio nihil aliud est quam jus persequendi in judicio quod sibi debetur*; an action is nothing else than the right of pursuing, in a court of justice, that which is due to one. *Inst.* 4. 6. pr. This definition of the Institutes is copied, with a slight change in the order of the words, from the older definition of Celsus in the Digests: *Nihil aliud est actio quam jus quod sibi debeatur, judicio persequendi*; which may be translated in precisely the same language, with the exception of the word *judicio*, which has the sense of a proceeding before a *judex*, already noticed.

Dig. 44. 7. 51. Bracton, who is followed by Fleta, adopts it, with a change in two words only, (*actio nihil aliud est quam jus persequendi in judicio quod alicui debetur*), accompanying it with a commentary intended to adapt it to the English law of his time. *Bract.* fol. 98 b. *Fleta*, lib. 1, c. 16, § 2. Later writers have endeavored to accommodate it still more closely to the English system, as will be explained under another head. See *Action*.

* * The precise nature of the Roman *actio* cannot well be understood from the very general definition of the civil law, (which, it will be seen, describes it not as a proceeding, but as a *right*), without some explanation. And first, as to the peculiar meaning of the expression in *judicio*, it will be necessary to observe that the proceedings in civil causes, under the old Roman system, were always conducted before two different judicial officers; the *prætor*, or magistrate, before whom the parties (*actor* and *reus*) appeared, and stated the case and defence; and the *judex*, a private person appointed by the *prætor*, to investigate the facts and decide the cause, according to a written formula of instructions. See *Judex*. Hence arose the division of the proceedings into two stages; those before the *prætor*, which were said to be *in jure*, and those before the *judex*, which were said to be *in judicio*. *Gaius, Inst.* iv. § 119. 1 *Kaufm. Mackeld. Civ. Law*, 187, note. The *actio* itself, under the earliest system of what were termed *actiones legis*, (q. v.) was a formula for which the *actor* or plaintiff applied to the *prætor*, at the commencement of the proceedings, and which the latter, in his discretion, allowed, (*actionem dabat*.) In its general objects, it resembled, or at least corresponded with the original writ of the English system, and from the manner in which it is always contrasted with the *exceptio*, (a formula on the part of the defendant answering nearly to the modern plea,) seems to have partaken also of the nature of the English count, or declaration. *Actionis verbo non continetur exceptio*, (under the word *actio*, an *exceptio* is not included,) is a maxim of the Digests. *Dig.* 50. 16. 8. Like the original writ, the *actio* lay at the foundation of the proceedings, was essential to their due institution, and gave the right to proceed in the particular case; and from this last circumstance may itself, not unaptly, have been termed the

right of pursuing, or *jus persequendi*, &c. It should not be overlooked, however, that notwithstanding the express words (*nihil aliud*) of the definitions already given, the *actio* was practically regarded as something else than a mere *jus*, or right; it was not only a *jus persequendi*, but the *persecutio* itself. *Actionis verbo etiam persecutio continetur.* Dig. 50. 16. 34.

The epithet *jus* seems more appropriately to belong to the proceeding by *formula*, which took the place of the *actiones legis*, when the latter were abolished. This formula, which, like the technical *actio*, was obtained from the prætor by the plaintiff, appears to have combined the qualities, or something like the qualities of the writ, pleadings, and *nisi prius* record of the English practice; concluding with the appointment of a *judex*, to try the cause, and an express direction to him how to decide it, as the facts might appear. *Gaius, Inst.* iv. § 40—47. 1 *Spence's Chancery*, 210, 216, 251. It evidently constituted the plaintiff's warrant for proceeding before the *judex*, or in *judicio*, and therefore may well have been defined *jus persequendi in judicio*.

Before the time of Justinian, the practice of appointing a *judex* had been laid aside; the investigation of the facts and decision of the cause being given to the same officer before whom the proceedings were originally commenced. 1 *Kaufm. Mack. Civ. Law*, 188, note. There had ceased, therefore, to be any proceeding in *judicio*, in the proper technical sense of the term. And yet the ancient definition, framed doubtless with reference to that proceeding, was adopted by Justinian almost in *hæc verba*. This may be explained by the supposition that the word *judicium* had, by that time, acquired the larger sense of judicial investigation, procedure or process in general, just as *judex* had exchanged its technical meaning, (a private person appointed by the prætor to investigate the facts of the case, and decide it according to certain instructions,) for that of a public judge, having undivided control of the cause from beginning to end. See *Judicium, Judex*.

Bracton, as has been observed, adopts the definition of Justinian almost literally, giving to the word *jus* the full meaning of right, and to *judicium* the general sense of a judicial procedure, or process of law. *Bract.* fol. 98 b. The same author, how-

ever, uses *judicium* in numerous other passages, in the sense of a court, and as the synonyme of *curia*. See *Judicium*. In *judicio*, therefore, in his definition, if not in that of the Institutes, may not improperly be translated "in a court of justice," "before a judicial tribunal."

ACTIO. Lat. In ancient English law. An action; otherwise termed, *placitum*, and sometimes *loquela*. *Placitum sive actio.* *Bract.* fol. 102 b. See *Action*. *Actio non datur non damnificato*. An action is not given to one who is not injured. *Jenk. Cent.* 69. *Actio quælibet it sua via*. Every action proceeds in its own course. *Id.* 77. *Actionum genera maxime sunt servanda*. The kinds or varieties of actions are especially to be preserved. *Lofft, Appendix*, 460.

ACTIO. L. Lat. In mediæval law. An office. *Actio comitatus*; the office of count. *Marculf. Form.* lib. 1. *Spelman*.

ACTIO NON ACCREVIT INFRA SEX ANNOS. L. Lat. The action did not accrue within six years. The emphatic words of the old plea of the statute of limitations, literally translated in the modern forms, and retained as the distinctive name of the plea. 3 *Chitt. Pl.* 941. See *Non assumpsit infra sex annos*.

ACTIO. NON. L. Lat. In pleading. An abbreviation of *actionem non*, the emphatic words anciently used at the commencement of a special plea in bar; the defendant first averring generally that the plaintiff "ought not to have or maintain his action," (*actionem non habere*), and then proceeding to state the reason—"because he says that," &c. Hence this whole preliminary formula, (literally translated in the modern forms,) has been technically termed the *actio. non*, or *actionem non*. *Steph. Plead.* 394, (Am. ed. 1824.) 3 *Chitt. Pl.* 906. As orally delivered by the pleader, it ran thus: *Action ne debes aver, car nous disons que*, &c.; you ought not to have your action, for we say that, &c. *Yearb. M.* 4 Hen. VI. 1. P. 4 Hen. VI. 13. By the rules of the English courts, (Hil. T. 4 Will. IV. 1, s. 10,) this clause was dispensed with.

ACTIO. NON ULTERIUS. L. Lat. In English pleading. A name given to the distinctive clause in the new plea to the further maintenance of the action, introduced in place of the plea *puis darrein continuance*; the averment being that the plaintiff ought not further (*ulterius*), to

have or maintain his action. *Steph. Pl.* 64, 65, 401.

ACTIO AD EXHIBENDUM. Lat. In the civil law. An action to compel the *exhibition* or production of a thing, together with what was called *rei causa*; under which was comprehended all that the claimant of the thing could demand in addition thereto, and especially what he could have had if the thing had not been withheld from him. *Inst.* 4. 17. 3. *Id.* 4. 6. 31. *Dig.* 10. 4. *Cod.* 3. 42. 1 *Mackeld. Civ. Law*, 155, § 153.

ACTIO ARBITRARIA. In the civil law. An arbitrary action; one depending upon the discretion of the judge, (*ex arbitrio judicis pendens*;) or in which the judge was allowed to determine according to equity and the circumstances of the particular case, how satisfaction should be made to the plaintiff; (*permittitur judici ex bono et æquo, secundum cujusque rei de quâ actum est naturam, æstimare quemadmodum actori satisfieri oporteat.*) If the defendant refused to conform to the decision of the judge, he might be condemned at discretion; (*nisi arbitrio judicis actori satisfiat, —condemnari debeat.*) *Inst.* 4. 6. 31.

ACTIO BONÆ FIDEL. In the civil law. An action of good faith; a species of equitable action *ex contractu*, in which the *judex* was allowed a discretionary power of determining upon principles of justice and equity, (*ex bono et æquo*), how much should be paid to the plaintiff, (*quantum actori restitui debeat*;) of allowing a set off (*compensatio*), on the part of the defendant; and generally, of taking into consideration the circumstances of the case, the intentions of the parties, and whatever was understood *ex fide bonâ*.* *Inst.* 4. 6. 28. 30. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, §§ 1183, 1185. 1 *Mackeld. Civ. Law*, 194, § 197. These actions were also called *arbitria*, and the *judex*, *arbitrator*; they were always brought for an *incertum*, (something indefinite or not ascertained,) and were distinguished from the *actiones stricti juris*, which were governed by strict rules, and were always directed to a *certum*. *Id. ibid.* See *Actio stricti juris*.

ACTIO CIVILIS. In the civil law. A civil action; an action founded on the *jus civile*, or proper Roman law, as distinguished from the *actio honoraria*, or prætorian action. All actions, in the Roman law, were, with respect to their origin, either civil or honorary, (*aut civiles decuntur aut honora-*

ria.) *Dig.* 44. 7. 25. 2. A distinction corresponding with the modern division into actions at law, and actions in equity. 1 *Story's Equity Jur.* § 37.

ACTIO CIVILIS. In the common law. A civil action, as distinguished from a criminal action. Bracton divides personal actions into *criminalia et civilia*, according as they grow out of crimes or contracts, (*secundum quod descendunt ex maleficiis vel contractibus.*) *Bract.* fol. 101 b.

ACTIO COMMODATI. In the civil law. An action of loan. See *Commodati actio*.

ACTIO COMMUNIS. A common action. A term applied by Bracton to an action where the thing demanded was common, and not several. *Bract.* fol. 103.

ACTIO COMMUNI DIVIDUNDO. In the civil law. An action for *dividing* a common property, or thing held in common. *Inst.* 4. 6. 20. *Id.* 4. 17. 5. *Dig.* 10. 3. See *Communi dividundo*. Enumerated by Bracton and Fleta, among actions arising *quasi ex contractu*. *Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

ACTIO CONFESSORIA. In the civil law. An affirmative action; an action founded upon the affirmative allegation of some right in the plaintiff in another's land, as a right of way, &c.; and not upon the denial of the right of another in his land.* *Inst.* 4. 6. 2. *Confessoria dicitur, quia constituta est verbis affirmativis.* *Bract.* fol. 103. See *Actio negatoria*.

ACTIO CONTRARIA. In the civil law. A contrary or cross action, as distinguished from *actio directa*, (q. v.) *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 15, §§ 805, 816, 826. *Bract.* fol. 103.

ACTIO CRIMINALIS. In the common law. A criminal action. *Bract.* fol. 102 b. See *Actio civilis*.

ACTIO DE DOLO MALO. In the civil law. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions, (*cum omni causâ*;) or, where this was not practicable, for compensation in damages. 1 *Mackeld. Civ. Law*, 221, § 217. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1152. *Dig.* 4. 3. *Cod.* 2. 21. *Bract.* fol. 103 b.

ACTIO DE IN REM VERSO. In the civil law. An action concerning a thing

converted to the profit of another; an action granted to one who had contracted with a son or slave, in order to recover whatever the father or master, by means of such contract, had converted to their own advantage. *Inst.* 4. 7. 4. *Dig.* 15. 3. *Cod.* 4. 26. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1222. *Halifax Analysis*, b. 3, c. 2, n. 7.

ACTIO DE PECULIO. In the civil law. An action concerning, or against the *peculium*, or separate property of a party.* An action to which fathers and masters were liable on the contracts of their children and servants, to the extent of the latter's *peculium*, patrimony, or separate estate. *Inst.* 4. 6. 10. *Id.* 4. 7. 4. *Dig.* 15. 1. *Cod.* 4. 26. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1219.

ACTIO DE PECUNIA CONSTITUTA. In the civil law. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another, without any formal stipulation, (*nulla stipulatione interposita*.)* *Inst.* 4. 6. 9. *Dig.* 13. 5. *Cod.* 4. 18.

ACTIO DEPOSITI. In the civil law. An action of deposit; an action upon or for a deposit; an action to recover a thing deposited. *Dig.* 16. 3. *Cod.* 4. 34. Called an action *bonæ fidei*. *Dig.* 16. 3. 23.

ACTIO DIRECTA. In the civil law. A direct action, in the stricter sense of the word *directus*; (q. v.) an action founded on strict law, and conducted according to fixed forms; called also *vulgaris*.* 1 *Mackeld. Civ. Law*, 189, § 194. *Id.* 268, note. *Dig.* 44. 7. 37. pr. *Bract.* fol. 103 a.

An action on a contract made through an agent, brought between the immediate parties to the contract, that is, the agent and the other contractor. *Story on Agency*, § 163.

An action for an injury directly committed by a person with his own hand or body, (*si quis corpore suo damnum dederit*;) or where the act done is immediately, and not consequentially injurious.* *Inst.* 4. 3. 16. All these are distinguished from the *actio utilis*. (q. v.)

An action brought to enforce an obligation, which is essential to a contract, and which therefore exists immediately after entering upon the same; as distinguished from *actio contraria*, or one brought for the payment of a counter claim. 1 *Mackeld. Civ. Law*, 191, § 195.

ACTIO EX CONDUCTO. In the civil law. An action upon hiring; an action which the hirer (*conductor*) of a thing, as a house, &c., might have against the letter or lessor (*locator*.) *Dig.* 19. 2. 15. *Cod.* 4. 65.

ACTIO EX CONTRACTU. In the civil and common law. An action of contract; an action arising out of, or founded on contract. *Inst.* 4. 6. 1. *Dig.* 44. 7. 25. 1. *Bract.* fol. 102. 3 *Bl. Com.* 117.

ACTIO EX DELICTO. In the civil and common law. An action of tort; an action arising out of fault, misconduct, or malfeasance. 1 *Mackeld. Civ. Law*, 191, § 195. 3 *Bl. Com.* 117. *Ex maleficio* is the more common expression of the civil law; which is adopted by Bracton. *Inst.* 4. 6. 1. *Bract.* fols. 102, 103.

ACTIO EX EMPTO. In the civil law. An action of purchase, or upon purchase; an action which a buyer is entitled to maintain against a seller, in order to cause him to deliver possession of the thing sold; with its titles and fruits, and every thing dependent upon it. *Pothier, Contr. of Sale*, part 2, ch. 1, art. 5. *Inst.* 4. 6. 28. Otherwise called *actio empti*, or *emti*. *Dig.* 19. 1. *Cod.* 4. 49. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24, § 912.

ACTIO EX FACTO. In the civil law. An action of fact, or upon fact. *Dig.* 44. 7. 25. 1.

ACTIO EX LOCATO. In the civil law. An action upon letting; an action which the person (*locator*) who let a thing for hire to another, might have against the hirer, (*conductor*.) *Dig.* 19. 2. *Cod.* 4. 65. See *Actio locati*.

ACTIO EX VENDITO. In the civil law. An action upon sale; an action which a seller is entitled to maintain against a buyer, to recover the price of a thing sold and delivered. *Inst.* 4. 6. 28. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24, § 915. Called *actio venditi*. *Id. ibid.* *Dig.* 19. 1. *Cod.* 4. 49.

ACTIO EXERCITORIA. In the civil law. An action against the *exercitor* or employer of a vessel. See *Exercitoria actio*.

ACTIO FAMILIÆ ERSCUNDÆ. In the civil law. An action for the partition of an inheritance. *Inst.* 4. 6. 20. *Id.* 4. 17. 4. Called by Bracton and Fleta, a mixed action, and classed among actions arising *ex quasi contractu*. *Bract.* fol. 100 b. *Id.* fol. 443 b, 444. *Fleta*, lib. 2, c. 60, § 1.

Id. lib. 5, c. 9, § 2. See *Familiæ eriscundaæ*.

ACTIO FINIUM REGUNDORUM. In the civil law. An action for the determination of boundaries between adjoining lands. *Inst.* 4. 17. 6. *Id.* 4. 6. 20. Enumerated by Bracton and Fleta, among mixed actions. *Bract.* fol. 444. *Fleta*, lib. 5, c. 9, § 3. See *Finium regundorum*.

ACTIO FURTIL. In the civil law. An action of theft; an action founded upon theft. *Inst.* 4. 1. 13—17. *Bract.* fol. 444. This could only be brought for the penalty attached to the offence, (*tantum ad pœnæ persecutionem pertinet*), and not to recover the thing stolen itself, for which other actions were provided. *Inst.* 4. 1. 19.

ACTIO HONORARIA. In the civil law. An honorary, or prætorian action. *Dig.* 44. 7. 25. 35. See *Actio civilis*.

ACTIO IN DUPLUM. In the civil law. An action for the double value of a thing. *Inst.* 4. 6. 21, 23. *Bract.* fol. 103 a.

ACTIO IN FACTUM. In the civil law. An action upon the fact, or adapted to the fact; an action not confined to any particular formula, but founded on the peculiar circumstances of the case; and intended to meet cases to which other forms of action were not applicable.* *Dig.* 19. 5. 1. pr. *Id.* 19. 5. 11. *Id.* 44. 7. 25. 1. It resembled the action on the case of the common law. 1 *Kames' Equity*, 147.

ACTIO IN PERSONAM. In the civil and common law. An action against the person; a personal action; an action founded on some personal liability, arising either out of contract, (*ex contractu*), or malfeasance, (*ex delicto*), as distinguished from an *actio in rem*, or one brought for the recovery of a thing, independently of any personal obligation. *Inst.* 4. 6. 1. *In personam actio est, qua cum eo agimus qui obligatus est nobis ad faciendum aliquid, vel dandum*; an action *in personam* is one which we may bring against him who is bound to us, to do or to give some thing. *Dig.* 44. 7. 25. It was otherwise called *condictio, actio personalis*, and *judicium personale*, (qq. v.) *Id.* *ibid.* *Inst.* 4. 6. 8. in tit. *Id.* 4. 6. 15. *Id.* 4. 11. pr. and 1. The great leading division of actions into those *in rem* and *in personam*, was established by the civil law, and introduced into the law of England chiefly through Bracton, who adopts it in terms. *Bract.* fol. 101 b.

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ACTIO IN QUADRUPPLUM. In the civil law. An action for the quadruple value of a thing. *Inst.* 4. 6. 21. *Bract.* fol. 103 a.

ACTIO IN REM. In the civil and common law. An action for a thing; an action for the recovery of a thing possessed by another. *Inst.* 4. 6. 1. *In rem actio est per quam rem nostram quæ ab alio possidetur petimus, et semper adversus eum est qui rem possidet*; an action *in rem* is one by which we demand a thing belonging to us which is possessed by another, and it is always brought against him who has the thing in possession. *Dig.* 44. 7. 25. Otherwise called *vindicatio*. *Id.* *ibid.* *Inst.* 4. 6. 15. Bracton confines this description of actions to those brought for the recovery of some immovable, corporeal thing, (*res corporalis immobilis*), as land, (*fundum aliquem vel terram*), or some right therein, (*jus quod rei adhæreat*). *Bract.* fol. 102. Hence the meaning of the term real action (*actio realis*, q. v.) in the common law.

An action directed against a thing, out of which the party bringing it seeks to obtain satisfaction, instead of proceeding against the person.* Thus, in the courts of admiralty, where a vessel is libelled for the purpose of obtaining satisfaction of some claim, or on the ground of forfeiture, it is said to be a proceeding *in rem*, not touching the person. 3 *Dallas' R.* 297. 1 *Kent's Com.* 373. *Id.* 367, note. 3 *Id.* 196.

ACTIO IN SIMPLUM. In the civil law. An action for the single value of a thing. *Inst.* 4. 6. 21, 22. *Bract.* fol. 103 a.

ACTIO IN TRIPLUM. In the civil law. An action for the triple value of a thing. *Inst.* 4. 6. 21, 24. *Bract.* fol. 103 a.

ACTIO INDIRECTA. An indirect action. A species of action mentioned by Bracton, probably the reverse of the *actio directa*, (q. v.) *Bract.* fol. 103 a.

ACTIO INJURIARUM. In the civil law. An action for injuries done by beating, wounding, slanderous language, libel, and the like. *Inst.* 4. 4. pr. 1, 12. *Bract.* fol. 103 b. See *Injuria*.

ACTIO INSTITORIA. See *Institoria actio*.

ACTIO LEGIS AQUILIÆ. In the civil law. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another.

Otherwise called *damni injuriæ actio*. *Inst.* 4. 3. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 3. *Halifax Anal.* b. 2, c. 24. *Bract.* fol. 103 b.

ACTIO LOCATI. In the civil law. An action which lay for the letter (*locator*) of a thing against the hirer, where the terms of the contract were not complied with by the latter. *Inst.* 3. 25. pr. *Dig.* 19. 2. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 928. See *Actio ex locato*.

ACTIO MANDATI. In the civil law. An action founded upon the contract of *mandatum* (q. v.) or mandate; an action of mandate. *Dig.* 17. 1. Otherwise called *mandati actio*, (q. v.)

ACTIO MIXTA, or MISTA. In the civil law. A mixed action; an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem*, and in *personam*. *Inst.* 4. 6. 16, 18, 19, 20. 1 *Mac-keld. Civ. Law.* 193, § 196.

An action in which each party is *actor*, or plaintiff; such as the actions *finium regundorum*, *familiæ erciscundæ*, *communi dividundo*, and others. *Dig.* 47. 7. 37. 1.

Bracton adopts both these significations, describing the *actio mixta*, in the first sense, as one which claims a thing itself, and a penalty for its unjust detention, (*persequitur rem ipsam, et penam propter injustam detentionem*.) *Bract.* fol. 102 b. 372 a. See *Fleta*, lib. 5, c. 9. Hence the mixed action of the common law. See *Mixed action*.

ACTIO NEGATORIA, or NEGATIVA. In the civil law. A negatory or negative action; an action founded on the denial (*negatio*) of another's right; as where a right of way, or other servitude in a particular estate is denied. *Inst.* 4. 6. 2. *Bract.* fol. 103 a. *Heinecc. Elem.* lib. 4, tit. 6, § 1136. *Halifax Anal.* b. 3, c. 1, n. 8. See *Actio confessoria*.

ACTIO NEGOTIORUM GESTORUM. In the civil law. An action upon, or on account of *business done*. An action given in cases where a person transacted the business of another during his absence, (*cum quis negotia absentis gesserit*,) or without a commission, or authority, (*sine mandato*.) *Inst.* 3. 28. 1. This was of two kinds; a *direct* action, which lay for the person whose business had been transacted, against him who had transacted it, (*domino rei gestæ adversus eum qui gessit*,) and a *cross* action, which lay for the *negotiorum gestor*,

as he was called, against the other. *Id. ibid.* *Heinecc. Elem.* lib. 3, tit. 28, §§ 973, 974. See *Negotiorum gestor*. This action is enumerated by Bracton and Fleta among actions arising *quasi ex contractu*, or *ex quasi contractu*. *Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

ACTIO NOXALIS. In the civil law. A noxal action; an action which lay against a master for a crime committed, or injury done by his slave; and in which the master had the alternative either to pay for the damage done, or to deliver up the slave to the complaining party. *Inst.* 4. 8. pr. *Heinecc. Elem.* lib. 4, tit. 8. *Halifax Anal.* b. 3, c. 2. So called from *noxæ*, the slave or offending person, or *noxia*, the offence or injury itself. *Inst.* 4. 8. 1.

ACTIO PERPETUA. In the civil law. A perpetual or unlimited action; one not limited to any particular period within which it should be brought.* *Inst.* 4. 12. pr. The opposite of the *actio temporalis*, (q. v.)

ACTIO PERSONALIS. In the civil and common law. A personal action. The ordinary term for this kind of action in the civil law is *actio in personam*, (q. v.) the word *personalis* being of only occasional occurrence. *Inst.* 4. 6. 8. in tit. *Id.* 4. 11. pr. 1. *Dig.* 50. 16. 178. 2. Bracton, however, uses it freely, and hence the *personal action* of the common law. *Bract.* fol. 102 a. 159 b. See *Personal action*.

Actio personalis moritur cum persona. A personal action dies with the person; a right of personal action dies with the person. *Noy's Max.* c. 1, max. 14. Called "a general rule of law, under which are included all actions for injuries merely personal." Lord Ellenborough, *C. J. 2 M. & S.* 415. "All private criminal injuries as well as all public crimes, are buried with the offender." Lord Mansfield, *C. J. Cowp.* 375.

This maxim is understood in two senses, according to the meaning given to the word *actio*; (1.) the *right to bring* a personal action dies with the person having such right: (2.) a personal *action when brought* dies with the party who brought it, (or abates on his death,) and cannot be prosecuted further. The latter of these presents the most literal translation of the maxim, but is a clear consequence of the former, which is the one most frequently illustrated in the books.

This maxim is not now understood in

the general sense which the terms of it appear to convey, having long been restricted in its application to that description of personal actions which are founded in tort, and are in form *ex delicto*. Lord Mansfield, C. J. *Cowp.* 371, 374—376. *Broom's Max.* 404, [702.] And even in regard to these, its application has been still further narrowed, from time to time, by legislative provisions giving rights of action to, and against the representatives of deceased persons, for injuries done to, or in respect of property. So that the principle embodied in the maxim is now strictly true only in cases where a tort is committed against the person, as by assault, battery, libel, slander, and the like. *Id. ibid.* 404—407, [702—711.] 3 *Bl. Com.* 302. *Shep. Touch.* 481. *Stat.* 4 Edw. III. c. 7. *Stat.* 3 & 4 Will. IV. c. 42. 2 *N. Y. Rev. St.* [114] 51, §§ 4—6. *Id.* [447] 365, §§ 1, 2. 17 *Howard's R.* 212. That it was originally applied to contracts, appears from Bracton. *Item tollitur [obligatio] morte alterius contrahentium, vel utriusque*; the obligation is also destroyed by the death of one or both of the contracting parties. *Bract.* fol. 101 a. And see *Noy's Max. ub. sup.*

ACTIO PIGNORATITIA. In the civil law. An action of pledge; an action founded on the contract of pledge, (*pignus*.) *Dig.* 13. 7. *Cod.* 4. 24. See *Pignoratitia actio*.

ACTIO PŒNÆ PERSECUTORIA. In the civil law. An action prosecuted for a penalty only, and not for a specific thing. *Inst.* 4. 6. 16, 18.

ACTIO PŒNALIS. In the civil law. A penal action; an action brought to enforce the payment of a private penalty. 1 *Mackeld. Civ. Law*, 193, § 196.

ACTIO PRÆJUDICIALIS. In the civil law. A preliminary, or preparatory action. An action brought for the determination of some point or question arising in another or principal action; and so called from its being determined before (*prius*, or *præ judicari*.) the principal action could proceed. *Bract.* 104 a. *Cowell.* Of this nature were actions for determining a man's civil state or condition, as whether he was a freeman or a slave, legitimate or illegitimate. *Inst.* 4. 6. 13. *Heinecc. Elem.* lib. 4, tit. 6, § 1142. *Halifax Anal.* b. 3, c. 1, n. 14.

ACTIO PRÆTORIA. In the civil law. A prætorian action; one introduced by the

prætor, as distinguished from the more ancient *actio civilis*, (q. v.) *Inst.* 4. 6. 3. 1 *Mackeld. Civ. Law*, 189, § 194.

ACTIO PROPRIA. An action brought for the recovery of a several thing, (*res propria*.) as distinguished from a thing held in common. *Bract.* fol. 103 a.

ACTIO PRO SOCIO. In the civil law. An action for a co-partner; an action which one co-partner (*socius*) might have against another. *Dig.* 17. 2. *Cod.* 4. 37.

ACTIO PUBLICIANA. In the civil law. An action which lay for one who had lost a thing of which he had *bonâ fide* obtained possession, before he had gained a property (*dominium*) in it, in order to have it restored, under color that he had obtained a property in it by prescription. *Inst.* 4. 6. 4. *Dig.* 6. 2. *Heinecc. Elem.* lib. 4, tit. 6, § 1131. *Halifax Anal.* b. 3, c. 1, n. 9. It was an honorary action, and derived its name from the prætor Publicius, by whose edict it was first given. *Inst.* 4. 6. 4.

ACTIO QUANTI MINORIS. In the civil law. An action given to a purchaser who had paid more for a thing than it was intrinsically worth, to recover back so much of the price as the thing was of less value (*quanti minoris*) or fell short in value, by reason of the defect.* *Pothier, Contract of Sale*, part 2, ch. 1, sect. 4, art. 5. 1 *Kames' Equity*, 271.

ACTIO QUOD JUSSU. In the civil law. An action given against a master, founded on some business done by his slave, acting under his order, (*jussu*.) *Inst.* 4. 7. 1. *Dig.* 15. 4. *Cod.* 4. 26.

ACTIO QUOD METUS CAUSA. In the civil law. An action granted to one who had been compelled by unlawful force, or fear (*metus causa*) that was not groundless, (*metus probabilis* or *justus*.) to deliver, sell or promise a thing to another. *Bract.* fol. 103 b. 1 *Mackeld. Civ. Law*, 120, § 216.

ACTIO or INTERDICTUM QUOD VI AUT CLAM. In the civil law. An action which lay where one forcibly or clandestinely, (*vi aut clam*.) erected or demolished a building on his own or another's ground, and thereby unlawfully injured another; its object being to get everything restored to its former condition, and to obtain damages.* *Dig.* 43. 24. 1. Bracton gives this action a place in his system of remedies, defining it as one which lay against him who had erected or prostrated a building,

on another's land, and concealed himself in order to avoid being prevented from doing it, (*et se occultavit, ne sibi prohiberetur*;) and observes that the offender might by this action be compelled to restore everything to its former state, at his own expense. *Bract.* fol. 103 b. 104 a. See *Interdictum*.

ACTIO REALIS. In the civil and common law. A real action. More commonly termed in the civil law *actio in rem*, (q. v.) *Inst.* 4. 6. 3. *Id.* 4. 17. 2. The barbarous word *realis* is of frequent occurrence in Bracton. *Actionum civilium quedam sunt reales, et quedam sunt personales*; of civil actions, some are real, and some are personal. *Bract.* fol. 159 b. *Si actio realis fuerit*; if the action be real. *Id.* fol. 183 b. See *Realis*.

ACTIO REDHIBITORIA. In the civil law. An action which lay to compel a vendor to *take back*, (*redhibere*,) the thing sold, and return the price. *Dig.* 21. 1. 21. *Heinecc. Elem.* lib. 3, tit. 24, § 913. *Pothier, Contr. of Sale*, part 2, ch. 1, sect. 4, art. 4. 1 *Kames' Equity*, 270, 271.

ACTIO REI PERSECUTORIA. In the civil law. An action for the recovery of a specific thing, (*rei persequendæ causâ comparata*,) or damages; as distinguished from the *actio pænæ persecutoria*, and the *actio mixta*. *Inst.* 4. 6. 16, 17. 1 *Mackeld. Civ. Law*, 192, § 196.

ACTIO RERUM AMOTARUM. In the civil law. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce, (*divortii consilio*,) *Dig.* 25. 2. *Id.* 25. 2. 25, 30. It also lay for the wife against the husband in such cases. *Id.* 25. 2. 7. 11. *Cod.* 5. 21.

ACTIO RESCISSORIA. In the civil law. An action for rescinding the title by prescription in certain cases; as where a person, while absent in the service of the state, had gained a prescriptive title to a thing belonging to a resident (*rem, ejus qui in civitate esset, usuceperit*;) the owner was allowed (*permittitur domino*) within a year after the return of the possessor from foreign service, to demand the thing, by rescinding the prescription; (*rescissâ usucapione eam rem petere*;) that is, to demand it by alleging that the possessor had not, in fact, gained a title by prescription, and that therefore the thing was still his own. *Inst.* 4. 6. 5. This action is differently described

by Heineccius, Halifax, and other writers. *Heinecc. Elem.* lib. 4, tit. 6, § 1132. *Halifax Anal.* b. 3, c. 1, c. 10. See *Rescissory action*.

ACTIO SEPULCHRI VIOLATI. In the civil law. An action for violating a grave. *Dig.* 47. 12. *Cod.* 9. 19.

ACTIO SERVIANA. In the civil law. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. *Inst.* 4. 6. 7. *Heinecc. Elem.* lib. 4, tit. 6, § 1139. *Halifax Anal.* b. 3, c. 1, n. 12.

ACTIO SPECIALIS. In the civil law. A special action; an action brought to enforce the delivery of one or several single things. 1 *Mackeld. Civ. Law*, 193, § 196. *Dig.* 6. 1. 1.

ACTIO STRICTI JURIS. In the civil law. An action of strict right. A species of action *ex contractu*, in which the *judex* was limited to the precise words of agreement between the parties, as expressed in the formula of his instructions, without any discretionary power, as in the *actio bonæ fidei*, (q. v.)* *Inst.* 4. 6. 28. *Heinecc. Elem.* lib. 4, tit. 6, § 1182. It was regulated by the strict rules of the civil law, and was always directed to a *certum* (a certain and specific thing,) and to the fulfilment of unilateral obligations alone. *Gaius, Inst.* iii. 137. 1 *Mackeld. Civ. Law*, 194, § 197.

In English law, also, formal precise actions are said to be *stricti juris*. 1 *W. Bl.* 388.

ACTIO TEMPORALIS. In the civil law. A temporary action; an action limited to a certain *time*, within which it was to be instituted, on pain of losing it; the opposite of *actio perpetua*, (q. v.)* *Inst.* 4. 12.

ACTIO TRIBUTORIA. In the civil law. An action for distribution; (*Lat. tribuere*, to distribute;) an action which lay for the creditor of a son or slave, who had traded upon his *peculium*, with the knowledge of his father or master, to obtain from the latter a distributive or proportionate share of the goods traded in, (*peculiares merces*,) or their proceeds.* *Inst.* 4. 7. 3. *Heinecc. Elem.* lib. 4, tit. 7, § 1217. *Halifax Anal.* b. 3, c. 2, n. 6.

ACTIO TUTELÆ. In the civil law. An action of tutelage. See *Tutelæ actio*.

ACTIO, or INTERDICTUM UNDE VI. In the civil law. An action, or interdict which lay to recover possession of an

immovable thing, as land, of which one had been deprived by force. So called from the formal words in it,—*unde tu illum vi dejecisti*, (from which you have ejected him by force.)* *Gaius, Inst.* iv. 154. *Inst.* 4. 15. 6. *Dig.* 43. 16. It resembled the modern action of ejectment, and is adopted by Bracton in his system of actions. *Bract.* fol. 103 b.

ACTIO UTILIS. In the civil law. An equitable, or beneficial action.* 1 *Kaufm. Mack. Civ. Law*, 268, note. An action which lay by, or against a principal, on the contract of his agent. *Story on Agency*, § 163. The opposite of *actio directa*, (q. v.)

An action *ex delicto*, which lay where the act of a party was not immediately, but only indirectly, or consequentially injurious to another.* *Inst.* 4. 3. 16. *Dig.* 44. 7. 37.

ACTIO VI BONORUM RAPTORUM.

In the civil law. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables (*bona*,) had been taken from him by force, (*vi*;) to recover the things so taken, together with a penalty of triple the value. *Inst.* 4. 2. *Id.* 4. 6. 19. Bracton describes it as lying *de rebus mobilibus vi ablatiis sive robbatis*; (for movable things taken away by force, or robbed.) *Bract.* fol. 103 b.

ACTIO VULGARIS. In the civil law. A common action; another name for the *actio directa*. 1 *Mackeld. Civ. Law*, 189, § 194. *Bract.* fol. 103 a.

ACTION. [Lat. *actio, lis*; L. Lat. *placitum, loquela*, qq. v.] The formal means or method of pursuing and recovering one's right in a court of justice. A formal proceeding (or series of proceedings,) in a court of justice, between parties plaintiff and defendant, by which the recovery of some alleged right is claimed by the one, and may be resisted by the other; and by which, also, such claim is enforced or denied by the court.

An action obviously partakes of the double character of a remedial instrument of justice, as it is described by Blackstone, (that is, an authorized instrument, or means by which a general remedy given by law is applied to, and enforced in a particular case;) and an established formula of litigation, as it is considered by Cicero, and the civil law writers. 3 *Bl. Com.* 3, 116, 117. *Actiones compositæ sunt, quibus inter se homines disceptarent*; actions were framed [as the means] by which men might liti-

gate with one another. *Dig.* 1. 2. 2. 6. *Sunt jura, sunt formulæ,—ad quas privata lis accommodatur*; there are rules and forms—by which private litigation is regulated. *Cic. pro Q. Roscio*, § 8.

An action is, in another essential point of view, a proceeding *in judicio*, (in the ancient sense of that phrase,) that is, before a court, and between parties. It is a proceeding by which each party, (or the plaintiff only, as the case may be,) seeks to obtain a *judicium*, (in the modern sense;) a judgment or determination of the court in his favor, on the case as he exhibits it; and by which also the court grants and enforces such judgment. It is not simply (though it is primarily,) a proceeding for the recovery of a right; but it is equally, after its institution, a proceeding for, and an instrument of defeating an unfounded demand. It consists of a series of acts done by the parties and the court, embracing what Bracton terms *judicium*, and which he describes as *trinus actus trium personarum*; *judicis, viz. actoris et rei*; the threefold act of three persons, to wit, the judge, the plaintiff and the defendant. *Bract.* fol. 106 a. This important feature of an action seems to have been overlooked in the ordinary definitions, most of which represent it as an unilateral proceeding merely.

Again, an action is essentially a complex or composite proceeding, consisting of a variety of parts put together in a certain order, or a series of proceedings commenced and conducted in a certain course, and in accordance with certain prescribed rules and forms. This will be more fully explained *infra*. The expression of the civil law,—*actiones compositæ sunt*, (actions are framed, or fitted together,) is peculiarly applicable to the modern action.

* * The oldest definition of the term *action* (*actio*) is that of the civil law,—*jus persequendi in judicio quod sibi debetur*; (the right of pursuing judicially, or in a court of justice, that which is due to one;) which has been adopted by Bracton, quoted with approval by Coke and Blackstone, and referred to as authority by later writers. *Inst.* 4. 6. pr. *Bract.* fol. 98 b. 2 *Inst.* 40. 3 *Bl. Com.* 116. The peculiar feature of this definition consists in its describing an action as a right, (*jus*,) which the Roman *actio* seems to have strictly been. See *Actio*. That the Roman idea on this subject was fully transferred to the ancient English action, appears not only

from Bracton's unqualified adoption of the definition, but from the express words of Lord Coke, who, in distinguishing between an *action* and a *writ*, (the original writ of the old practice,) observes that "an action is the *right of a suit*, and the writ is grounded thereupon, and is the means to bring the demandant or plaintiff to his right." 2 *Inst.* 40. And see the observations of Lord Hardwicke, C. J. in *Smith v. Boucher, Cas. temp. Hardw.* 139. In its modern sense and use, however, the term *action* very clearly implies, not only a right, but the actual *exercise* of a right; the prosecution of means for the recovery of a right. *Ersk. Inst.* b. 4, tit. 1. And see *Bell's Dict.* in voc. Hence, even the civilian Heineccius, while adopting Justinian's definition of an action as a right, subjoins the following definition of an action as a remedy—*medium legitimum persequendi in iudicio jura*, (the lawful means of pursuing rights in a court.) *Elem. Jur. Civ.* lib. 4, tit. 6, § 1126. A double definition of a similar kind is adopted by some of the Scotch writers. *Forbes' Inst.* part 4, b. 1, ch. 2, tit. 1.

The next oldest definition of the term *action* is that of the English common law, first given by the Mirror, and adopted by Lord Coke: *Action n'est autre chose que loiall demande de son droit*; an action is nothing else than the lawful demand of one's right. *Mirr.* c. 2, § 1. *Co. Litt.* 285 a. 2 *Inst.* 40. This presents an action in more of its modern character,—a right *actually exercised*, an act, or proceeding,—but still only as a *unilateral* proceeding,—the act of the *plaintiff*,—no reference being made to any opposing party, or his act in opposition, while all reference to a tribunal, (except what may be inferred from the word *lawful*,) is excluded. The more expanded definition of Erskine, "a demand regularly made, and insisted on before the proper judge, for the attaining or recovering of a right," while it admits the important idea of a court, seems otherwise liable to the same objection. *Ersk. Inst.* b. 4, tit. 1. A modern action is not only something more than a mere *right*, but also something more than the mere *demand* of a right; embracing clearly the ideas, not only of a demand which must be *made* in proper form, but of a demand which may be *resisted* by an opposing party, and which must be *acted upon* by the court to which it is presented. It in-

cludes, in other words, not only the act of the *plaintiff* in making a lawful demand, but the act of the *defendant*, in opposition, and the act of the *court* in passing judgment between the parties: so well embodied in the expression of Bracton,—*trinus actus trium personarum*,—already noticed.

For the reasons here given, the compiler has been induced to substitute, in the place of these celebrated definitions of the ancient law, others, supposed to be more fully expressive of the nature of an action in its modern acceptation. In further illustration of the definitions substituted, the following remarks are submitted:

The nature of an action, as a complex or *composite* proceeding, has been already adverted to. The proceedings of which it is made up may, indeed, be reduced under two general heads, viz. the *presentation* of a case to a court for its decision, and the *decision* of the court thereon; which are the two successive objects an action always contemplates. In order, however, to accomplish the first of these, the parties must properly *appear* in court, and the case itself must be *presented* in proper form; and to attain the last effectually, the case presented must be *made out* by proof or argument, and the judgment of the court when obtained, must be carried into *execution*. Hence an action, where it takes its regular course, always consists of the following successive proceedings: *process*, by which the party complained of is brought before the court; *pleadings*, by which the nature of the demand and the defence is exhibited to the court by the respective parties; *trial* or *hearing* by the court of the case so presented; *judgment* or *decree*, by which the court awards or denies the remedy sought by the action; and *execution*, by which the judgment is actually and specifically enforced. See *Process, Pleading, Trial, Hearing, Judgment, Execution*. These proceedings, again, are each composed of a variety of acts, having each its proper rule and form; besides which there are numerous others, of an incidental or occasional kind, growing out of the various circumstances attending the action, and by which its progress is modified, more or less interrupted, and sometimes prematurely terminated. See *Practice*.

An action, as we have seen, is a proceeding between *parties*. Of these, the plaintiff, or complainant is ordinarily con-

sidered as the *actor*, the *acting* party in an emphatic sense, (sometimes called in the old law *pars actrix*.) who sets the law in motion, (*qui lege agit*.) and pursues (*persequitur*) his remedy through the court; hence expressively termed in Scotch law, the *pursuer*. The defendant, or accused party (*reus*) opposes and resists him, *denying* (in the ancient sense of the term *defend*.) either the right of action generally, or the propriety of the particular action employed; and *defending himself*, (in the modern sense,) by such proceedings as the case from time to time admits or requires. See *Actor*, *Defendant*, *Plaintiff*, *Reus*.

The terms *action* and *suit* are now nearly, if not entirely synonymous. 3 *Bl. Com.* 3, 116, *et passim*. Marshall, C. J. 6 *Wheaton's R.* 264. Or, if there be a distinction, it is that the term *action* is generally confined to proceedings in a court of law, while *suit* is equally applied to prosecutions at law or in equity. Formerly, however, there was a more substantial distinction between them. An *action* was considered as terminating with the giving of judgment, and the execution formed no part of it. *Litt. sect.* 504. *Co. Litt.* 289 a. A *suit*, on the other hand, included the execution. *Id.* 291 a. So, an action is termed by Lord Coke, "the right of a *suit*." 2 *Inst.* 40. See *Suit*.

It is further to be observed that there are many judicial proceedings, conducted nearly in the same form as actions, before the same tribunals, and with the same general objects, viz., the enforcement of some legal right or remedy, which nevertheless are not technically considered as *actions*, nor so denominated. Of this description are the proceedings at law by *writ of error*, *scire facias*, *mandamus*, *certiorari*, *habeas corpus*, and the like. Originally, indeed, the terms *writ* and *action* were nearly synonymous. *Steph. Pl.* 8. *Gilb. C. Pleas*, 4. And Lord Coke has laid down the rule, that every writ to which the defendant may plead, be it original, or judicial, is in law an action. *Co. Litt.* 291 a. Practically, however, the term *action* is now exclusively appropriated to those forms of judicial remedy which are ranked under the threefold division of *real*, *personal* and *mixed* actions, (qq. v.)

By the New-York Code of Procedure, an action is defined to be "an ordinary proceeding in a court of justice, by which a party prosecutes another party for the

enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. Every other remedy is a special proceeding." *Code*, §§ 2, 3.

ACTION ON THE CASE. [*L. Lat. actio super casum.*] In practice. A species of personal action of very extensive application, otherwise called *trespass on the case*, or simply *case*, from the circumstance of the plaintiff's whole case or cause of complaint being set forth at length in the original writ by which formerly it was always commenced. 3 *Bl. Com.* 122. See *Case*, *Trespass on the case*.

ACTION OF ABSTRACTED MULTURES. In Scotch law. An action to recover *multures*, that is, tolls due by tenure to a particular mill for grinding grain, and which have been *abstracted*, that is, withdrawn, or withheld by the tenants.* *Forbes' Inst.* part 2, b. 2, ch. 4, tit. 3, § 1. See *Multure*.

ACTION OF A WRIT. A phrase used in the old books, where a defendant pleaded some matter tending to show that the plaintiff had no cause to have *the writ he brought*, although it might be that he might have *another* writ or action for the same matter. Such a plea was called a *plea to the action of the writ*. If, however, it appeared from the plea that the plaintiff had no cause to have *any* action for the thing demanded, then it was called a *plea to the action*. *Termes de la ley*. Cowell.

ACTION PREJUDICIAL. See *Actio præjudicialis*.

ACTIONABLE. That which can legally be made the ground or subject of an action; that for which an action will lie.* Chiefly applied to slanderous words uttered or published of another. 3 *Chitty's Bl. Com.* 123, 125, and notes.

ACTIONARE. *L. Lat.* [from *actio*, an action.] In old records. To bring an action; to prosecute, or sue. *Thorn's Chron.* *Whishaw*.

ACTIONARIUS, Accionarius. *L. Lat.* [from *actio*, an office.] In old European law. An officer. *Spelman*, citing *Chart. Ethelb. Reg. A. D. 748. LL. Longob. lib.* 1, tit. 9, l. 28.

ACTIONES LEGIS. *Lat.* In the Roman law. Actions of or at law; legal or lawful actions; (*legitimæ actiones*.) *Dig.* 1. 2. 2. 6. One of the sources of the unwritten law of Rome. *Butler's Hor. Jurid.* 47. So called, according to Gaius,

either because they were expressly given by the laws (*quod legibus proditæ erant*;) or because they were adapted to, or expressed in the words of the laws, (*quia ipsarum legum verbis accommodatæ erant*;) being on that account regarded as immutable as the laws themselves, (*immutabiles proinde atque leges observabantur*.) *Gaius*, *Inst.* iv. § 11. These constituted the most ancient system of judicial remedy among the Romans, and were subject to very strict rules; the slightest error or deviation from the prescribed form being fatal to the action, (*ut qui vel minimum errasset litem perderet*.) *Id.* § 30. They were abolished by the *Lex Æbutia*, and the two *Leges Julię*, and the proceeding by formula (*per concepta verba*) substituted in their place. *Id.* *ibid.* See *Actio*.

ACTON BURNEL, *Statute of*. In English law. A statute, otherwise called *Statutum de Mercatoribus*, made at a parliament held at the castle of Acton Burnel in Shropshire, in the 11th year of the reign of Edward I. 2 *Reeves' Hist. Eng. Law*, 158—162. *Barringt. Obs. Stat.* 116. This statute was explained and new provisions added by the statute 13 Edw. I. st. 3, bearing the same title, (*De Mercatoribus*, q. v.) *Id.* 119. *Fleta*, lib. 2, c. 64, § 1.

ACTOR. Lat. [from *agere*, to act, to do, to move.] In the civil and common law. The party who institutes or prosecutes an action, (*qui lege agit*;) a plaintiff, (*querens*.) *Inst.* 4. 6. 30, 34, 38. *Id.* 4. 15. 7. *Bract.* fol. 106 a. 376 a. 2 *Bl. Com.* 25. Sometimes termed *agens*, and *pars actrix*, (qq. v.) *Inst.* 4. 6. 33. *Reg. Orig.* 9 a. *Fleta*, lib. 2, c. 63, § 11. In some cases, both parties are regarded as actors; (*uterque actor est*;) and such actions are termed in the civil law, *judicia duplicia*, and *mixtæ actiones*; double or mixed actions. *Dig.* 44. 7. 37. 1. 1 *Mackeld. Civ. Law*, 188, § 193. Of this description is the modern action of replevin. But the term actor, even in these cases, properly belongs to the party commencing the proceedings, (*ille actor qui primo provocaverit ad iudicium*.) *Bract.* fol. 102 b. 372 a. *Eum actorem qui ad iudicium provocasset*. *Dig.* 5. 1. 13.

Actor sequitur forum rei. The plaintiff follows the forum of the thing [in controversy.] He must sue in the court where the property is; that is, in the court of the place, or country, where the thing (*res*) in controversy is situate, (*sita est*;) or, as it is

technically expressed, in the *forum rei sitæ*, (q. v.) 2 *Kent's Com.* 462, 463. *Story's Conf. of Laws*, § 325 k. Every question concerning a subject [*res*] movable or immovable, must be determined by the judge whose legal powers extend over that subject. 2 *Kames' Equity*, 343.

Actor sequitur forum rei. The plaintiff follows the court of the defendant, (*reus*;) that is, he must sue in the court of the place where the defendant resides. *Cod.* 3. 19. 3. *Id.* 3. 13. 2. 5. This was a maxim in the time of Bracton. *Verum est quod sive laicum sive clericum velit quis convenire, debet adire iudicem et sequi forum rei, et iudicem habebit illum apud quem reus habet domicilium, sive domicilium habuerit sub jurisdictione unius vel duorum*. It is true that whether one desires to sue a layman, or a clerk, he must apply to the judge, and follow the court of the defendant, and must have him as his judge with whom the defendant has his domicile, whether he has his domicile under the jurisdiction of one or two. *Bract.* fol. 401 a. But this maxim was not of universal application. *Id.* *ibid.* See *Fleta*, lib. 6, c. 37.

The apparently exact verbal similarity between this and the preceding maxim will not escape notice; the difference consisting in the circumstance that the word *rei* in the one, is the genitive of *res*, (a thing,) and in the other, of *reus*, (a defendant.)

Actore non probante absolvitur reus. The plaintiff not proving [his demand] the defendant is acquitted. *Hob.* 103.

Actori incumbit probatio, [onus probandi.] The burden of proof lies on the plaintiff. *Hob.* 103 a.

ACTOR. Lat. [from *agere*, to do, to act.] In the Roman law. One who acted for another; one who attended to another's business; a manager or agent. A slave who attended to, transacted or superintended his master's business or affairs, received and paid out moneys, and kept accounts, (*rationes*.) *Dig.* 10. 2. 8. *Id.* 11. 3. 1. 5. *Id.* 34. 1. 18. 3. *Id.* 34. 3. 12. *Id.* 40. 4. 53. *Id.* 40. 4. 59. pr. *Id.* 40. 5. 41. 4. *Id.* 40. 7. 40. 3. *Id.* 48. 5. 17. 5. Called in Greek *παραστάτης*. *Dig.* 40. 5. 41. 4. Distinguished from *procurator*. *Cod.* 5. 61.

The manager, agent or attorney of a municipal or other corporation. *Dig.* 2. 4. 10. 4. *Id.* 3. 4. 1. 1. *Id.* 3. 3. 74. *Id.* 13. 5. 5. 7. 9. *Id.* 36. 1. 27. *Id.* 36. 4. 12. *Id.* 37. 1. 3. 4. *Id.* 44. 2. 11. 7. *Id.* 50. 12. 8. A syndic. *Calv. Lex*.

A temporary guardian or tutor. *Inst.* l. 23. 6.

In old European law. A proctor, advocate or pleader; one who acted for another in legal matters; one who represented a party and managed his cause. *Actor dominicus*; a lord's or king's advocate. *Capit. Carol.* lib. 4, c. 44. *Spelman. Cowell. Actor ecclesiæ*; the advocate or pleading patron of a church. *Add. 3 Ludovic. Imp. ad Capit.* c. 12. *Spelman. Cowell.*

An attorney, bailiff or steward; one who managed or acted for another. The Scotch "doer" is the literal translation. *Actor dominicus*; a lord's bailiff. *Spelman. Cowell. Actor regis*; a king's bailiff. *LL. Longob.* lib. 1, tit. 34, l. 1. *Actor villæ*; the steward or head bailiff of a town or village. *Capit. Carol.* lib. 4, c. 41. *Spelman. Cowell.*

ACTORNATUS. L. Lat. In old Scotch law. An actornay or attorney. *Reg. Maj.* lib. 4, c. si quis defendens, 46; cited in *Skene de Verb. Sign.*

ACTORNAY. O. Sc. [L. Lat. *actor-natus*, q. v.] In old Scotch law. Attorney; an attorney. *Skene de Verb. Sign. voc. Actornatus.*

ACTRIX. L. Lat. In old English law. A female actor, or plaintiff; as the demandant in an action of dower. *Bract.* fol. 307 b. *Actrix dici poterit illa quæ prius ad iudicium provocavit*; she may be called *actrix*, who first summons to court. *Id. ibid. Fleta*, lib. 5, c. 30, § 4.

ACTS OF SEDERUNT. In Scotch law. Ordinances made by the court of session, for regulating the forms of proceeding to be observed in all actions or matters which may be brought before them. *Ersk. Inst.* b. 1, tit. 1, § 40. So called from the word *sederunt*, [they sat,] with which anciently they used to begin; or because they are made by the lords sitting in judgment. *Forbes' Inst. prel. diss. ch. 3, tit. 10.* See *Arkley's R.* 270.

ACTUAL COST. The actual price paid for goods by a party, in the case of a real *bonâ fide* purchase, and not the market value of the goods. *Story, J. 2 Story's R.* 421, 429. 2 *Mason's R.* 48. So defined in construction of the 66th section of the U. S. Revenue Act of 1799, ch. 128. See 2 *Mason*, 393.

ACTUARIUS. Lat. [from *acta*, q. v.] In the Roman law. An officer who took down in short hand, (like the modern reporter,) what was said or done, (*acta*,) be-

fore the public magistrates; an actuary. *Suet. J. Cas.* 55.

A keeper or writer of public records; an officer having charge of accounts. *Cod.* 12. 38. 5. *Id.* 12. 50. *Calv. Lex.* See *Actuary.*

ACTUARY. [Lat. *actuarius*.] A secretary, clerk, or register of any public body, or association; particularly of an ecclesiastical body, or court. *Cowell. Blount.*

The manager of a joint stock company, under a board of directors, particularly of an insurance company; combining with the duties of a secretary, those of a scientific adviser to the board which gives him his office, in all matters involving calculation; a person skilled in the doctrine of life annuities and insurances, and who is in the habit of giving opinions upon cases of annuities, reversions, &c. *Stat.* 59 Geo. III. c. 128. *P. Cyclopaedia.*

ACTUM, pl. *Acta*. Lat. [from *agere*, to do.] In the civil law. Done; a thing done; an act, or deed. *Quodcumque scriptum sit quasi actum, videatur etiam actum*; whatever is written as done, (alleged in writing to be done,) shall be supposed to be actually done. *Inst.* 3. 21. 8. A distinction was made between *actum*, and *gestum*; the former was called a general term, (*generale verbum*,) applicable to any thing done, whether in words, or in fact, (*sive verbis sive re quid agatur*;) the latter was restricted to signify a thing done without words (*rem sine verbis factam*.) *Dig.* 50. 16. 19. *Actum* is less used in the singular, as a substantive, than *actus*, (q. v.) but the plural *acta* (q. v.) is of frequent occurrence.

ACTUM. Lat. In old records. Done; the initial word of the concluding clause of instruments, containing the date. See *Done*.

ACTUS, pl. *Actus*, [from *agere*, to do.] In the civil law. An act or action. *Non tantum verbis, sed etiam actu*; not only by words, but also by act. *Dig.* 46. 8. 5.

An act or proceeding; acts or proceedings. *Cod.* 3. 12. 8.

In old English law. An act; a deed; a proceeding. Acts; deeds; proceedings. *Publici actus*; public acts, or proceedings. *Bract.* fol. 336. *Actus curiæ*; an act of a court, or of the court. *Actus Dei*; an act, or the act of God. *Actus legis*; an act, or the act of the law. See *infra*.

Actus me invito factus non est meus actus. An act done by me, against my will, is not my act. *Branch's Princ.* The concurrence of a person's will (*voluntas*) in an

act, is essential to charge him with the act, or its consequences. *Tolle voluntatem, et erit omnis actus indifferens*; take away will, and every act becomes indifferent. *Bract.* fol. 101 b.

Actus non facit reum, nisi mens sit rea. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. 3 *Inst.* 107. The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J. 7 *T. R.* 514. *Broom's Max.* 144, [226.] This maxim is exclusively applicable to criminal law, and to civil proceedings for slander and libel; in civil actions, the intent is immaterial, if the act done be injurious to another. *Id.* 155, 161. The maxim, *Affectio tua nomen imponit operi tuo*, (q. v.) embodies the same principle. *Bract.* fol. 101 b.

Actus curiæ neminem gravabit. An act of the court shall prejudice no man. *Jenk. Cent.* 118. Where a delay in an action is the act of the court, neither party shall suffer for it. Thus, if one party die during a *curia advisari vult*, (q. v.) judgment may be entered *nunc pro tunc*, (q. v.) for the delay is the act of the court. 1 *Stra.* 425. *Broom's Max.* 52, [86.]

Actus Dei nemini facit injuriam. The act of God does injury to no one. 2 *Bl. Com.* 122. 5 *Co.* 87. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. *Broom's Max.* 108, [171.] Thus, if a tenant for his own life sows the lands, and dies before harvest, his executors shall have the emblements, or profits of the crop, for the estate was determined by the act of God. 2 *Bl. Com.* 122.

Actus Dei nemini est damnosus. The act of God is hurtful to no one. 2 *Inst.* 287. Another form of the last maxim.

Actus legis nemini facit injuriam. The act of the law does injury to no one. 5 *Co.* 116. Eyre, C. J. 2 *H. Bl.* 324, 334. Thus, if a lease be made to husband and wife during coverture, (which gives them a determinable estate for life,) and the husband sows the land, and afterwards they are divorced *a vinculo matrimonii*, the husband shall have the emblements in this case, for the sentence of divorce is the act of law. 2 *Bl. Com.* 123.

Actus legis nemini est damnosus. The act of the law is hurtful to no one. The

law wrongs no man. 2 *Inst.* 287. *Broom's Max.* [89.] A different form of the last maxim.

Actus inceptus, ejus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingentia, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. *Bacon's Max.* 79, reg. 20.

Actus judicarius coram non judice irritus habetur, de ministeriali autem, a quocunque provenit, ratum esto. A judicial act before one who is not a judge is held void, but as to a ministerial act, from whomsoever it proceeds, let it be valid. *Lofft, Appendix*, 458.

Actus legitimi non recipiunt modum. Acts requiring to be done by law do not admit of qualification. *Hob.* 153. *Branch's Princ.*

ACTUS. L. Lat. [from *agere*, to do.] In old English law. An act of Parliament; a statute. 8 *Co.* 40, [20.] 4 *Reeves' Hist. Eng. Law*, 111. A distinction, however, was sometimes made between *actus* and *statutum*. *Actus parliamenti* was an act made by the Lords and Commons; and it became *statutum*, when it received the king's consent. *Barringt. Obs. Stat.* 46, note [b].

ACTUS. Lat. [from *agere*, to drive.] In the civil law. A species of right of way, consisting in the right of driving cattle, or a carriage, (*jus agendi jumentum vel vehiculum*,) over the land subject to the servitude. *Inst.* 2. 3. pr. *Dig.* 8. 3. 1. It is sometimes translated a road, and included the kind of way termed *iter*, or path. *Id. ibid.* 1 *Mackeld. Civ. Law*, 343, § 313. See *Iter*. The three terms, *actus*, *iter* and *via*, appear to have been introduced into the old law of England, by Bracton. *Bract.* fol. 7 b. 232 a. *Fleta*, lib. 4, c. 27, §§ 1, 2.

Lord Coke, who adopts the term *actus* from Bracton, defines it a foot and horse way, vulgarly called pack and prime way; but distinguishes it from a cart way. *Co. Litt.* 56 a.

AD. Lat. To. *Ad damnum*, (q. v.); to the damage. *Ad* was formerly the usual word in judgment records, to express the amount recovered. *Damna sua predicta ad cent' libras*; his damages aforesaid to one hundred pounds, &c. 2 *Show.* 88, 89.

For. *Ad tempus* ; for a time. *Dig.* 50. 4. 12. *Ad litem* ; for the suit. 2 *Steph. Com.* 333. *Ad vitam* ; for life. *Bract.* fol. 41 a.

At. *Ad festum* ; at the feast. *Fleta*, lib. 2, c. 64, § 3. *Ad largum* ; at large. *Plowd.* 37.

Until. *Ad eum diem* ; unto that day. *Dig.* 48. 5. 29. 7. *Ad culpam* ; until misbehavior. See *Ad vitam aut culpam*.

By ; near, (*juxta*.) *Calv. Lex.*

On account of, (*ob*.) *Id.*

Upon, (*super*.) *Id.* *Ad Edictum* ; upon the Edict. *Dig. passim.* *Ad Sabinum* ; upon Sabinus. *Id.*

AD. L. Fr. [from *aver*, to have.] Has. *Come ceo que il ad de son done* ; as that which he has of his gift. See *Fine. Ad este* ; has been. *Yearb.* P. 7 Hen. VI. 16.

AD ABUNDANTIOREM CAUTELAM. L. Lat. For more abundant caution. 2 *Hov. State Trials*, 1182. Otherwise expressed, *ad cautelam ex superabundanti.* *Id.* 1163.

AD ADMITTENDUM CLERICUM, (or *De clerico admittendo* ; for admitting a clerk.) L. Lat. In English law. A writ, in the nature of an execution, in the action of *quare impedit*, founded on the judgment, (that the plaintiff recover his presentation,) and commanding the bishop to whom it is directed, to admit his clerk.* 3 *Bl. Com.* 250. 3 *Steph. Com.* 665. *Bract.* fol. 248 a.

AD ALIUD EXAMEN. L. Lat. To another tribunal. 2 *Inst.* 602. 5 *Mason's R.* 43. "It belongs *ad aliud examen*," is an expression frequently used in the opinions of courts, where cognizance or jurisdiction of any matter or question is disclaimed. 3 *Story's R.* 827. 11 *Peters' R.* 182. *Alium* is sometimes inaccurately used for *aliud.* *Id. ibid.* See *Aliud examen*.

AD ALIUM DIEM. L. Lat. At another day. A common phrase in the old reports. *Yearb.* P. 7 Hen. VI. 13.

AD ASSISAS CAPIENDAS. L. Lat. To take assises ; to take or hold the assises. *Bract.* fol. 110 a. 3 *Bl. Com.* 185. *Ad assisam capiendam* ; to take an assise. *Bract.* fol. 110 b.

AD AUDIENDUM ET TERMINANDUM. L. Lat. To hear and determine. *Stat. Westm.* 2, c. 29, 30. 2 *Reeves' Hist. Eng. Law*, 169, 170. See *Oyer and Terminer*.

AD BARRAM. L. Lat. To the bar ; at the bar. 3 *Hov. St. Trials*, 112.

AD CAMPI PARTEM. L. Lat. For a share of the field or land, (*ut particeps fiat* ;) for champert. *Fleta*, lib. 2, c. 36, § 4.

AD COLLIGENDUM BONA DEFUNCTI. L. Lat. To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to collect and preserve the goods of the deceased, are so called. 2 *Bl. Com.* 505. 2 *Steph. Com.* 241. These are otherwise termed letters *ad colligendum*, and the party to whom they are granted, a collector. 2 *N. Y. Rev. St.* [76,] 19, §§ 38, 39.

AD COMMUNEM LEGEM. L. Lat. At the common law. The name of a species of writ of entry, now obsolete. Formerly, when tenant for life, in dower, or by the curtesy, aliened in fee, tail, or for life, the land which they held, the reversioner in fee, tail, or for life, might, after their death, have a writ of entry *ad communem legem*, to recover possession. *F. N. B.* 207 G. 1 *Roscoe on Real Actions*, 93, 94. 3 *Bl. Com.* 183, note (z). 3 *Reeves' Hist. Eng. Law*, 39.

AD COMPARENDUM. L. Lat. To appear. *Reg. Orig.* 60 a. *Ad comparendum, et ad standum juri* ; to appear and to stand to the law, or abide the judgment of the court. *Cro. Jac.* 67.

AD COMPOTUM REDDENDUM. L. Lat. To render an account. *Stat. Westm.* 2, c. 11.

AD CONSULENDUM. Lat. To consult ; for the purpose of consultation. *Bract.* fol. 5 b. 1 *Bl. Com.* 227.

AD CURIAM. L. Lat. At a court. 1 *Salk.* 195.

To court. *Ad curiam vocare* ; to summon to court. *Feud. Lib.* 2, tit. 22.

AD CUSTAGIA. L. Lat. At the costs. *Reg. Jud.* 9 a. *Ad ejus propria custagia* ; at his own proper costs. *Towns. Pl.* 18. *Ad propria onera et custagia partis* ; at the proper costs and charges of the party. *Callis on Sewers*, 74. See *Custagia*.

AD CUSTUM. L. Lat. At the cost. *Ad custum ejus* ; at his cost. *Bract.* fol. 234 a. *Ad custum suum, vel custum tuum* ; at his cost, or yours. *Id.* fol. 328. *Ad custus* ; at the costs. *Reg. Orig.* 279 b.

AD DAMNUM, *Ad dampnum*. L. Lat. To the damage. In pleading. The emphatic words of the clause at the end of the declaration, when in Latin, in which a cer-

tain amount of damages was claimed. *Ad damnum ipsius A. —, et inde, &c.* *Towns. Pl.* 418. This is literally translated in the modern forms, "to the damage of the said A. of —, and therefore," &c.; and hence the clause itself is technically termed the *ad damnum*. 1 *Chitt. Pl.* 419. See *Damnum*. A similar clause in libels in admiralty is so termed. *Story, J. 3 Mason's R.* 503, 504.

AD DEFENDENDUM. Lat. To defend. 1 *Bl. Com.* 227.

AD DIEM. Lat. At a day; at the day. *Towns. Pl.* 23. *Ad certum diem*; at a certain day. 2 *Stra.* 747. *Solvit ad diem*; he paid at, or on the day. 1 *Chitt. Pl.* 485.

Ad ea quæ frequentius accidunt jura adaptantur. Laws are adapted to those cases which most frequently occur. 2 *Inst.* 137. 5 *Co.* 128. 6 *Id.* 77. *Wingate's Max.* 716, max. 101. *Broom's Max.* [35,] 138, note. *Curtis, J.* 12 *Howard's R.* 312. *Jura constitui oportet, ut dixit Theophrastus, in his quæ ἐκ τῷ πλείστον accidunt, non quæ ἐκ παραλόγου*; laws ought to be established, as Theophrastus has said, in [for] those cases which most commonly happen, not for those which happen unexpectedly. *Dig.* 1. 3. 3. *Ad ea potius debet aptari jus, quæ et frequenter et facile, quam quæ per raro eveniunt*; the law ought rather to be adapted to those cases which happen frequently and freely, than to those which happen rarely. *Id.* 1. 35. See *Id.* 1. 3. 6. *Id.* 1. 3. 10.

AD EFFECTUM. L. Lat. To the effect, or end. *Co. Litt.* 204 a. 2 *Crabb's Real Prop.* 802, § 2143. *Ad effectum sequentem*; to the effect following. 2 *Salk.* 417.

AD EOSDEM TERMINOS. L. Lat. For or upon the same terms. *Bacon's Arg. Low's Case of Tenures, Works,* iv. 239.

AD ESSENDUM. L. Lat. To be. *Ad essendum coram justiciariis*; to be before the justices. *Fleta, lib. 2, c. 50, § 12.* *Ad essendum de consilio suo*; to be of his counsel. *Yearb. P.* 11 Hen. VI. 1.

AD EXCAMBIUM. L. Lat. For recompense; to make recompense. *Bract. fol. 12 b. 37 b.* *Ad escambium.* *Id.* fol. 27 a. See *Excambium*.

AD EXHÆREDATIONEM. L. Lat. To the disherison, or disinheriting; to the injury of the inheritance. *Bract. fol. 15 a. 3 Bl. Com.* 228. Formal words in the old writs of waste.

AD EXHIBENDUM. See *Actio ad exhibendum*.

AD EXITUM. L. Lat. At issue; at the end (of the pleadings.) *Steph. Pl.* 24. See *Exitus, Issue*.

AD FACIENDUM. Lat. To do; to make. *Co. Litt.* 204 a. 2 *Crabb's Real Prop.* 803, § 2145. *Ad faciendum, subjiendum et recipiendum*; to do, submit to, and receive. See *Habeas corpus. Ad faciendam juratam illam*; to make that jury. *Fleta, lib. 2, c. 65, § 12.*

AD FACTUM PRÆSTANDUM. Lat. For performance of a specific act. *Shaw's (Scotch) R.* 265.

AD FEODI FIRMAM. L. Lat. To fee farm. *Fleta, lib. 2, c. 50, § 30.*

AD FIDEM. Lat. [L. Fr. *a foy.*] Under, or in allegiance; owing allegiance; bound to allegiance, or fealty. *Ad fidem regis*; under the king's allegiance. *Ab omnibus qui sunt ad fidem regis*; by all the king's liege-men. *Fleta, lib. 2, c. 65, § 4.* *Natus ad fidem regis*; born in allegiance to the king. *Bacon's Arg.* Case of Postnati of Scotland, *Works,* iv. 346. *Ad fidem regis Angliæ,—ad fidem regis Franciæ.* *Fleta, lib. 6, c. 48, § 4.* *Quia est ad fidem regis Franciæ, et nihil capere poterit antequam fiat fides regi Angliæ*; because he owes allegiance to the king of France, and can take nothing before allegiance (or fealty,) be sworn to the king of England. *Bract. fol. 428 b.* See *Fides, A foy.*

Ad fidem utriusque regis; owing allegiance to each king; the subject of both kings. *Sunt aliqui Francigenæ in Francia qui sunt ad fidem utriusque*; there are some Frenchmen in France who owe allegiance to both [kings.] *Bract. fol. 427 b.* This phrase is adopted by Lord Coke and Lord Bacon, and is freely used in modern law, in the discussion of questions of allegiance, and citizenship. 7 *Co.* 1, 27, 54; *Bacon's Arg.* Case of the Postnati of Scotland, *Works,* iv. 357. 2 *Kent's Com.* 56.

AD FILUM AQUÆ. L. Lat. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquæ*; as far as the thread of the stream. *Bract. fol. 208 b. 235 a.* A phrase of frequent occurrence in modern law; of which *ad medium filum aquæ* (q. v.) is another form. See *Filum, Filum aquæ.*

AD FILUM VIÆ. L. Lat. To the thread of the way, road or street. See *Filum viæ.*

AD FIRMAM. L. Lat. To farm. *Ad*

firmam dimittere; to let to farm. *Bract.* fol. 12 b. *Ad firmam ponere*; to put or set to farm. *Nec vendam nec ad firmam ponam*; nor will I sell, nor put to farm. *Chart. Hen.* I. A. D. 1100. See *Firma, Farm.*

For a farm, or term. See *Id.*

At a farm, or rent. See *Id.*

AD GAOLAS DELIBERANDAS. L. Lat. To deliver the gaols. *Bract.* fol. 109 b. *Reg. Jud.* 30. *Ad gaolam deliberandam*; to deliver the gaol; to make gaol delivery. *Bract.* fol. 110 b.

AD GRAVAMEN. Lat. To the grievance, injury or oppression. *Fleta*, lib. 2, c. 47, § 10.

AD HOC. Lat. To this; hereunto. *Towns. Pl.* 22. *Ad hoc facit*; [it] makes to, or for this; favors this doctrine; goes to establish this point, or principle. *Bract.* fol. 53 b. A common expression in Bracton. *Ad hoc facit lex imperatoria*; with this agrees the imperial (Roman or civil) law. *Fleta*, lib. 1, c. 38, § 15. *Id.* lib. 3, c. 10, § 3.

AD HUNC DIEM. L. Lat. At this day. 1 *Leon.* 90.

AD IDEM. Lat. To the same point, or effect. *Ad idem facit*; it makes to, or goes to establish the same point. *Bract.* fol. 27 b. 29 a. A very common expression in Bracton, in referring to adjudged cases. *Ad idem* is used also in the old reports, and not unfrequently in the modern books. *T. Raym.* 175. *Hardr.* 97, 98. 1 *Show.* 353, 390. 1 *Sumner's R.* 310, 463. In the Year Books it is used to denote concurrence in opinion or argument, in the same case.

AD ILLUD. Lat. To that; thereto, or thereunto. *Towns. Pl.* 22.

AD INDE. L. Lat. Thereunto. *Ad inde requisitus*; thereunto required. *Towns. Pl.* 22.

AD INQUIRENDUM. Lat. To inquire. *Breve ad inquirendum*; a writ to inquire; a writ of inquiry. A judicial writ, commanding inquiry to be made of any thing relating to a cause pending in court. *Cowell.*

AD INSTANTIAM. L. Lat. At the instance. 2 *Mod.* 44. *Ad instantiam partis*; at the instance of a party. *Hale's Hist. Com. Law*, 28.

AD ITINERANDUM. L. Lat. To itinerate. *Justitiiarii ad itinerandum de comitatu in comitatum*; justices to itinerate from county to county. *Bract.* fol. 108 b. See *Iter, Justitiiarius.*

AD JUDICIUM. Lat. To judgment; to court. *Ad judicium provocare*; to summon to court; to commence an action. *Dig.* 5. 1. 13, 14.

AD JUNGENDUM AUXILIUM. L. Lat. To join aid; to join in aid. 1 *Roscoe's Real Act.* 280. See *Auxilium, Summoneas ad auxiliandum.*

AD JURA REGIS, or REGIA. L. Lat. For [preserving] the rights of the crown. The name of a writ, in English practice, brought by the king's clerk when presented to a living, against him who sought to eject him, to the prejudice of the king's title. *Reg. Orig.* 61—65. 4 *Co.* pref. *Cowell.*

AD LARGUM. L. Lat. At large; at liberty; free, or unconfined. *Ire ad largum*; to go at large. *Plowd.* 37.

At large; giving details, or particulars; in extenso. A special verdict was formerly called a verdict at large. *Plowd.* 92.

AD LITEM. L. Lat. For a, or the suit; with reference to a suit; for the purpose of prosecuting or defending a suit. 2 *Steph. Com.* 333. A term commonly applied to guardians.

AD LUCRANDUM VEL PERDENDUM. L. Lat. To gain or lose. Emphatic words in the old warrants of attorney. *Reg. Orig.* 21, *et seq.* Sometimes expressed in English, "to lose and gain." *Plowd.* 201. See *Pro lucrari.*

AD MAJOREM CAUTELAM. L. Lat. For greater security. 2 *How. State Trials*, 1182.

AD MAJUS. L. Lat. At the most. *Towns. Pl.* 17.

AD MANUM. L. Lat. At hand; ready for use. *Et querens sectam habeat ad manum*; and the plaintiff immediately have his suit ready. *Fleta*, lib. 2, c. 44, § 2.

AD MEDIUM FILUM AQUÆ. L. Lat. To the middle thread, or line of the water; to the centre of the stream. An expression frequently used in describing the extent of the rights of the proprietors of land bounded on a river, or stream. 3 *Kent's Com.* 428, 429, and notes. 2 *Smith's Lead. Cas.* 98, [147, 148, Am. ed.] *Ad filum medium aquæ, ad filum aquæ, usque filum aquæ, usque ad medium filum aquæ*, are different forms of this phrase. See *Filum aquæ.*

AD MEDIUM FILUM VIÆ. L. Lat. To the middle line, or thread of the way; to the centre of the road, or street. A

phrase used in describing the extent of the right of ownership of lands bounded on a street or highway. 2 *Smith's Lead. Cas.* 98, [144, 145, Am. ed.] See *Filum viae*.

AD MINUS. L. Lat. At the least. *Ut ad minus teneatur ad interesse*; that he may at least be held to the extent of his interest. *Bract.* fol. 18 b. *Assignentur duo justiciarii, ad minus, in singulis com'*; there shall be assigned two justices at least, in each county. *Fleta*, lib. 4, c. 5, § 11.

AD MORDENDUM ASSUETUS. L. Lat. Accustomed to bite. *Cro. Car.* 254. A material averment in declarations for damage done by a dog to persons, or animals. 1 *Chitt. Pl.* 388. 2 *Id.* 597.

AD NOCUMENTUM. L. Lat. To the nuisance, or annoyance. *Fleta*, lib. 2, c. 52, § 19. *Ad nocumentum liberi tenementi sui*; to the nuisance of his freehold. Formal words in the old assise of nuisance. 3 *Bl. Com.* 221.

AD OPUS. L. Lat. For the benefit or use. This phrase, and that of *ad opus et usum*, (for the benefit and use,) are called by Lord Bacon, "barbarous phrases, the Latin of which savours of the time of Richard II." *Bac. Read. Uses.* *Ad opus* seems to be a close rendering of the L. Fr. *al oeps*, (q. v.)

AD OSTENDENDUM. L. Lat. To show. Formal words in old writs. *Fleta*, lib. 4, c. 65, § 12. See *Ostensusus*.

AD OSTIUM ECCLESIAE. L. Lat. [L. Fr. *al huis d'esglise*.] At the door of the church. *Bract.* fol. 92 a. 2 *Bl. Com.* 132, 133. See *Dover and ostium ecclesiae*.

AD PROSEQUENDUM. L. Lat. To prosecute. 11 *Mod.* 363.

Ad proximum antecedens fiat relatio, (nisi impediatur sententia.) Relation should be had, or made to the next antecedent, unless the sense forbid. *Jenk. Cent.* 180. *Noy's Max.* 4. Words in construction must be referred to the next antecedent, where the matter itself doth not hinder it. *Finch, Law*, b. 1, c. 3. *Wingate's Max.* 15, max. 10. Thus, where a devise was to H. and the heirs of his body, remainder to T. C. of W. and the heirs male of his body, upon condition that *he or they*, or any of them, should not alien, &c., the words *he or they* were held to refer not to H., but to T. C. of W., &c. 5 *Co.* 68 a. But where an award was that one party should pay before such a feast ten pounds to the other, and that *then* the other should make him a release, it was held that the word *then*

should not be referred to the feast, but to the time of payment of the money. *Dyer.* 15 b. arg. Relative words generally must be referred to the next antecedent, where the intent upon the whole deed does not appear to the contrary, and where the matter itself doth not hinder it; the "last antecedent" being the last word which can be made an antecedent, so as to have a meaning. *Broom's Max.* 292-294, [529.] *Tindal, C. J.* 1 *Ad. & Ell.* 445. See 5 *Hill's (N. Y.) R.* 410. 4 *Foster's R.* 9.

The meaning of this maxim has been singularly mistaken in most of the translations of it. Thus, in Branch,—“Let the antecedent relate to that which follows next to it, unless a sentence intervene.” In Noy.—“The antecedent bears relation to what follows next, unless it destroys the meaning of the sentence.” In Wharton,—“Let the antecedent relation be connected with that which follows, unless it is intervened by a sentence.” It is hardly necessary to add that the last of these reduces the maxim to an absurdity. The use of *impediatur* for *impediat*, in some of the books, has tended in a considerable degree to obscure the sense.

Ad questionem facti non respondent judices: ad questionem legis non respondent juratores. Judges do not answer to a question of fact: jurors do not answer to a question of law. *Co. Litt.* 295 b. 8 *Co.* 308, [155.] Or, as the converse is sometimes affirmatively stated: **Ad questionem juris respondent judices; ad questionem facti respondent juratores.** Judges answer to a question of law; jurors, to a question of fact. A maxim embodying the great leading principle of pleading, that a question or issue of *law* must be answered, that is, determined by the court; and a question or issue of *fact* must be answered, that is, tried by a jury. *Broom's Max.* 43, [77.] Used, also, as expressive of the general rule of proceeding on trials before a jury, viz.: that it is the office of the judge to instruct the jury in points of law, and of the jury to decide on matters of fact. *Co. Litt.* 295 b. See *Broom's Max.* 43-48, [77-84.]

* * In Vaughan's Reports, it is said,—“That *decanatum* in our books,—*ad questionem facti non respondent judices; ad questionem legis non respondent juratores*, literally taken, is true. For, if it be demanded, what is the fact, the judge can-

not answer it; if it be asked, what is the law, the jury cannot answer it." *Vaugh.* 149. There are, however, several exceptions to both branches of this maxim: thus,—

First, that judges have no right to respond to questions of fact, is not universally true. For, to say nothing of those courts in which all issues, as well of fact as of law, are determined by the judges, it constantly happens, even in common law courts, that there are questions or matters of fact connected with the issue before the jury, which it is unquestionably the province of the court to determine. Of this nature are questions as to the admissibility of evidence, (*Broom's Max.* [82.] 11 *M. & W.* 486. 33 *Eng. Law & Eq. R.* 393,) questions of reasonableness—reasonable cause, reasonable time, and the like. *Broom's Max.* [82.] 7 *Scott, N. R.* 280. *Co. Litt.* 566. 11 *M. & W.* 817. Even in the matter of weighing evidence, and saying what is the fact upon such evidence, which is conceded to be the peculiar province of the jury in all cases, judges are (according to the prevailing practice) allowed, in summing up the evidence in the case, to express opinions to the jury, as to the facts which such evidence conduces to prove, or to point out the conclusions which, in their opinion, ought to be drawn from it. This practice was approved by the Supreme Court of the United States in a recent case, (13 *Howard's R.* 115, 130, 131,) although the contrary was strenuously maintained by Daniel, J. in a dissenting opinion in the same case, in which he argued that such a practice was virtually a "responding to questions of fact," within the meaning of the maxim, and in violation of it. *Id.* 144, 145.

Again, it is not universally and literally true that juries have no right to respond to questions of law arising on trials. For, although, in all civil cases, where the issue before the jury is compounded of questions of law and fact united, it is undoubtedly the province of the court to decide the questions of law, or to declare to the jury what is the law of the case, yet the actual decision or response, which of course includes the law (as taken from the court) as well as the fact, always rests with the jury. In criminal cases, indeed, the maxim has been much more extensively qualified, and the rule broadly laid down, that jurors are the judges both of the law and the fact. 1

Parker's Crim. R. 595. *Id.* 603. 17 *Georgia R.* 497. 2 *Swan's R.* 482. But the rule has also been laid down in directly opposite terms—that the jury are not the judges of the law in such cases. *Story, J.* 2 *Sumner's R.* 240, 243. 1 *Parker's Cr. R.* 147, 474. 1 *Curtis' C. C. R.* 23.

AD QUERIMONIAM. L. Lat. On the complaint. *Statim ad querimoniam creditoris*; immediately on the complaint of the creditor. *Fleta*, lib. 2, c. 64, § 4.

AD QUOD CURIA CONCORDAVIT. L. Lat. To which the court agreed. *Yearb.* P. 20 Hen. VI. 27.

AD QUOD DAMNUM. L. Lat. (To what damage.) In English law. A writ (so called from these its emphatic words,) directed to the sheriff, commanding him to inquire by the oath of jurors, whether a grant intended to be made by the king would be to his damage, or prejudice, or to that of others; and if it be, then to *what damage*, (*ad quod damnum et quod præjudicium nostrum, et ad quod damnum, et quod præjudicium aliorum.*) *Reg. Orig.* 247 a, *et seq.* *F. N. B.* 221. Called "an ancient writ, and well known to the law." *Le Blanc, J.* 2 *M. & S.* 236. It is required to be issued before the crown can grant certain liberties, as a fair, market, &c., which may be prejudicial to others, and it was also formerly had for the turning and changing of ancient highways, watercourses, &c. *Termes de la ley.* *Whishaw.*

A writ under this name is given by the Revised Statutes of New-York, in cases where the governor of the state is authorized by law to take possession of any lands or tenements within the state for the use of the people, and he cannot agree with the owners of such lands for the purchase thereof. 2 *Rev. St.* [588,] 488, § 66. In other states, as in Virginia, Kentucky, Illinois, Missouri and Mississippi, it is issued on applications to build mills or mill-dams, on occasions of establishing or altering roads, and ferry landings, and for other purposes. *Code of Virginia*, (ed. 1849,) pp. 267, 328, 528. *Revised Statutes of Kentucky*, (ed. 1852,) pp. 357, 507, 581. 2 *Comp. Statutes of Illinois*, (ed. 1858,) p. 768. 2 *Rev. Stat. of Missouri*, (ed. 1855,) p. 1082. *Rev. Code of Mississippi*, (ed. 1857,) p. 202.

AD QUOD NON FUIT RESPONSUM. L. Lat. To which there was no answer. A phrase used in the reports, where a point

advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or noticed by the court; or where an objection was met by the court, and not replied to by the counsel who raised it. 3 Co. 9. 4 Id. 40. Comb. 474.

AD RATIONEM PONERE. L. Lat. To put to [give] a reason; to call upon for a reason; to put to the bar and interrogate as to a charge made; to arraign on a trial. A technical term in old Exchequer records. *Posit' ad rationem, &c. confes' quod &c. Mem. in Scacc. M. 20 Edw. I. Et posit' esset ad rationem quo warranto, &c. Id. H. 22 Edw. I.*

AD RECOGNOSCENDUM. L. Lat. To recognize. *Fleta*, lib. 2, c. 65, § 12. Formal words in old writs. See *Recognitura*.

AD RECTUM. L. Lat. To right; to do right; to meet an accusation; to answer the demands of the law.* *Habeant eos ad rectum*; they shall have them to answer the law, or to make satisfaction. *Bract.* fol. 124 b.

AD RESPONDENDUM. L. Lat. To answer. Emphatic words in the old writs of *capias*, and other writs. *Fleta*, lib. 2, c. 65, § 12. *Reg. Orig.* 273. See *Capias ad respondendum*. Sometimes the equivalent word *responsurus* (q. v.) was used.

AD SECTAM. L. Lat. At the suit; at the suit of. *Reg. Orig.* 273 a. *Bract.* fol. 131 b. 3 *How. State Trials*, 111. *Ad sectam querentis*; at the suit of the plaintiff. *Fleta*, lib. 2, c. 47, § 1. *Ad nullius sectam*; at the suit of no one. *Bract.* fol. 133 a. This term, (abbreviated to *adsm.* and *ads.*) is still retained in practice, in entitling papers. See *Ads.*

AD STANDUM RECTO. L. Lat. [L. Fr. *ester a droit*.] To stand to the right; to meet an accusation or complaint; to stand a trial; to abide by the sentence of the law.* *Responsurus, et ad standum recto, si sit aliquis qui versus eum loquatur*; to answer, and to stand to the charge, if there be any one who shall complain against him. *Bract.* fol. 125 a. *Plegium ad standum recto*; security to appear and answer to an accusation. *Id.* fol. 154 a. *Plegios ad standum recto.* *Fleta*, lib. 1, c. 26, § 3. *Plegios de stando ad rectum.* *Bract.* fol. 336 a. See *Reg. Orig.* 270. The phrase *stare juri*, (q. v.) has the same meaning. *Reg. Orig.* 270 b. And so has the old Scotch phrase, *ad subeundum legem*, (q. v.)

AD STUDENDUM ET ORANDUM. L. Lat. For studying and praying; for the promotion of learning and religion. A phrase applied to colleges and universities. 1 *Bl. Com.* 467. *T. Raym.* 101.

AD SUBEUNDUM LEGEM. L. Lat. To undergo, [Scotticè, to underly] the law; to abide the sentence of the law. 1 *Pitcairn's Crim. Trials*, part 1, p. 92. A common phrase in old Scotch law.

AD TERMINUM. L. Lat. For a term. *Ad terminum vite vel annorum*; for a term of life or years. *Bract.* fol. 26 b. *Ad terminum annorum.* *Fleta*, lib. 3, c. 12, § 6. *Ad terminum, vel ad tempus*; for a term, or for a time. *Bract. ubi supra.*

AD TERMINUM QUI PRÆTERIIT. L. Lat. For a term which has passed. The name of a writ of entry which lay at common law for the lessor or his heirs, where a lease had been made of lands or tenements for life or years, and after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same; the writ commanding the tenant to restore to the demandant the land which the latter had demised to him for a term which was passed; (*ad terminum qui præteriiit*.) *Bract.* fol. 318 a. *Reg. Orig.* 227 b. *F. N. B.* 201. 3 *Bl. Com.* 176. 3 *Reeves' Hist. Eng. Law*, 30. 1 *Roscoe's Real Act.* 97. This writ was superseded by the action of ejectment, and is now abolished in English law by statute 3 & 4 Will. IV. c. 27, s. 36.

AD TRACTANDUM ET CONSILIUM IMPENDENDUM. L. Lat. To discuss and give advice. 1 *Bl. Com.* 168.

AD ULTIMAM VIM TERMINORUM. L. Lat. To the most extended import of the terms; in a sense as universal as the terms will reach. 2 *Eden*, 54.

AD VALENTIAM. L. Lat. To, or of the value. *Bract.* fol. 315 b. *Yelv.* 71.

AD VALOREM. L. Lat. Upon the value. According to the value. *Ad valorem* duties are those which are imposed on goods, merchandise, and other articles, at a certain rate per centum on their value, and sometimes on their cost. See *Acts of Congress*, March 2, 1799, ch. 22, sect. 61; March 1, 1823, ch. 21, sect. 5; July 30, 1846, ch. 74; March 3, 1857, ch. 98.

"An *ad valorem* tax means a tax or duty upon the value of the article or thing subject to taxation." *Yerger, J. 24 Mississippi R.* 501. But the term *ad valorem*, in the various revenue laws of the United

States, charging a duty on imports, does not always mean the actual value of the article at the place of exportation. *Crabbe's R.* 499, 512. See Act of March 1, 1823, ch. 21, sect. 5; 3 *U. S. Statutes at Large*, 732.

AD VENTREM INSPICIENDUM. See *De ventre inspiciendo*.

AD VITAM. Lat. For life. *Bract.* fol. 13 b. *In feodo, vel ad vitam*; in fee, or for life. *Id. ibid.*

AD VITAM AUT CULPAM. L. Lat. In Scotch law. For life, or until misbehavior. 6 *Bell's Appeal Cases*, 112. A term of similar import with *quamdiu bene se gesserit* (q. v.) in English law. *Stat.* 28 Geo. II. c. 7. See *Culpa*.

AD VOLUNTATEM. L. Lat. At will. *Bract.* fol. 27 a.

AD WARACTUM. L. Lat. To follow. *Bract.* fol. 228 b. See *Waractum*.

ADÆQUATIO. Lat. [from *adæquare*, to equal, or equalize.] In the civil law. A making equal; a sharing equally. *Hotom. Verb. Feud. Cowell*, voc. *Coparceners*.

ADÆRARE. Lat. In the civil law. To estimate in money, (*ære æstimare*.) *Calv. Lex. Brissonius*.

In old European law. To put a price or valuation on; to value; to appraise, (*adpræciare*.) *LL. Burgund.* Addit. 2, § 7. *Spelman*.

ADAYER. L. Fr. To provoke. *L. Fr. Dict. Kelham.* *Adayerment*; provocation. *Id.*

ADDICERE. Lat. In the civil law. To adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the prætors. 1 *Kaufm. Mackeld. Civ. Law*, 187, note. See *Do, Dico, Addico*.

ADDICTIO. Lat. [from *addicere*, q. v.] An assignment by the sentence of a court. By the old Roman law, if the party who was cast in an action did not obey the sentence of the court within thirty days, he was assigned over (*addictus*) to the successful party, who might commit him to prison till satisfaction was made.* *Halifax Anal.* b. 3, c. 9, n. 44.

ADDICTIO IN DIEM. Lat. In the civil law. A sale made with a clause or agreement that the contract shall not hold if the seller afterwards, and within a certain space of time limited by the contract, shall find another buyer who will make him a more advantageous offer. *Dig.* 18.

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2. 1. *Pothier, Contr. of Sale*, part 3, sect. 3. *Id.* part 5, ch. 2, sec. 4.

ADDITIO. Lat. Addition; an addition, (q. v.) **Additio probat minoritatem.** An addition, [to a name] proves, or shows minority, or inferiority. 4 *Inst.* 80. *Wingate's Max.* 211, max. 60. This maxim is applied by Lord Coke to courts, and terms of law; *minoritas* being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is *coram rege*, and the style of the court of chancery is *coram domino rege in cancellaria*; the addition showing the difference. 4 *Inst.* 80. So by the word *fee*, without more saying, is always intended *fee simple*, fee tail not being intended by it, unless there be added to it the addition of the word *tail*. See *Litt.* sect. 293. *Co. Litt.* 189 a. *Wingate's Max. ub. sup.*

ADDITION. The title or description of a person in law proceedings, given in addition to his name, for the purpose of more accurate designation, and showing his estate, degree, mystery and place of residence.* *Termes de la Ley. Cowell.* Called in Scotch law, *designation*. In English law, there are four kinds of additions; additions of *estate*, such as yeoman, gentleman, esquire; additions of *degree*, or names of dignity, as knight, earl, marquess, duke; additions of *trade*, mystery or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence, as London, Chester, &c. The only additions recognised in American law are those of mystery, and residence.

* * * The object of giving additions to the names of persons is very clearly stated in the statute of 1 Hen. V. c. 5, by which the practice was introduced, and which ordained that, in actions where process of outlawry lay, such additions should be to the name of the defendant, to show his estate, mystery and place of residence, in order that one man might not be vexed or troubled by the outlawry of another; [as where there were several of the same name,] but that by reason of the certain addition, every person might be known, and bear his own burden. *Cowell.* 2 *Inst.* 665. See *Barringt. Obs. Stat.* 381. A like provision was applied by the same statute to indictments, in order to identify the person of the offender. 4 *Bl. Com.* 306.

ADDONE, Addonne. L. Fr. Given to. *Kelham. L. Fr. Dict.*

ADDOUBEUR. L. Fr. A promoter, or setter up of causes. *Kelham.*

ADDRESSER. *Adresser.* L. Fr. To hold up; to erect. *Addresseroient en haut leur maynes dextres*; should hold up on high their right hands. *Kelham.*

ADEEM. [Lat. *adimere*, to take away.] To take away, take back, or revoke, as a legacy. *Ward on Legacies*, 261. See *Ademption.*

ADELANTADO. Span. In Spanish law. A governor of a province. *Las Partidas*, part 6, tit. 4, l. 2.

A president or president judge; a judge having jurisdiction over a kingdom, or over certain provinces only. So called from having authority over the judges of those places. *Id.* part 3, tit. 4, l. 1.

ADELING. [L. Lat. *Adelingus*; from Sax. *ædel*, or *ædelan*, noble, excellent.] A title of honor among the Saxons, given to the king's children, and heirs to the crown. Called by the Normans, *domicellus*, and by the Latin writers of the same period, *Clito Spelman.*

ADEPTIO. Lat. [from *adimere*, to take away, revoke, adeem.] In the civil law. A revocation of a legacy; an ademption. *Inst.* 2. 21. pr. Where it was expressly transferred from one person to another, it was called *translatio*. *Id.* 2. 21. 1. *Dig.* 34. 4.

ADEPTION. [Lat. *ademptio*, q. v.] A taking away, or revocation; a term derived from the civil law. See *Ademptio*. *Ademption of a legacy* is the taking it away from the party to whom it has been given, arising from a supposed alteration in the testator's intention. Thus, if a man who has a sum of money due to him on a bond, expressly bequeaths it to some person named in his will, and after having done so, calls in the money himself, this is an *ademption* of the legacy, which is said to be *adeemed*. *Ward on Legacies*, 261, 268. *Ambl.* 401. *Holthouse.* *Whishaw.* So where a thing specifically bequeathed is not in existence at the time of the testator's decease, it is an *ademption*. 3 *Foster's R.* 212.

ADEO. Lat. So; as. *Adeo plene et integre*; as fully and entirely. 10 *Co.* 65. See *Adire.*

ADEPRIMES. L. Fr. First; at first; for the first time. In the first place. *Fet Assaver*, § 14. *Kelham.* *Pledes adeprimés v're plea, et puis desputes*; plead your

plea first, and then argue. *Yearb.* P. 8 Edw. III. 9.

ADERERE. L. Fr. In arrear; behind. *Litt.* sect. 151.

ADESOUTH. L. Fr. Under; beneath. *Kelham.*

ΑΔΕΣΠΟΤΑ, Αδισποτα. Gr. [from *α*, without, and *δεσποτης*, a master.] In the civil law. Without an owner or master, (*hero carentes*.) *Grot. de Jur. Belli*, lib. 2, c. 8, § 6. Things which have no owner or claimant. *Calv. Lex.*

ADESSE. Lat. [from *ad*, to, and *esse*, to be.] In the civil law. To be present; the opposite of *abesse*. *Calv. Lex.*

To advocate; to assist or defend in law; to undertake the management of a cause. *Id.* *Brissonius.*

ADEU. L. Fr. Without day. *Alex adeu.* *Yearb.* T. 5 Edw. II. 173. See *Adieu.*

ADEVANT, Adavaunt. L. Fr. Before. *Kelham.*

ADFERRUMINATIO. Lat. [from *ad*, to, and *ferrum*, iron.] In the civil law. The welding together of iron; a species of *adjunctio*, (q. v.) Called also *ferruminatio*, (q. v.) *Dig.* 6. 1. 23. 5. 1 *Mackeld. Civ. Law*, 281, § 268.

ADFINES, Affines. Lat. [from *ad*, to, and *finis*, a border, or limit.] In the civil law. Relations, or connections by marriage; so called, because the families (*cognationes*.) of the husband and wife are connected by the marriage (*per nuptias copulatur*), and the one comes up to the line which divides it from the other, (*et altera ad alterius cognationis finem accedit*.) *Dig.* 38. 10. 4. 3. Thus very expressively distinguishing them from relations by blood, between whom there exists an actual union, without any intervening barrier, (*finis*.) or dividing line.

ADGISANT, Adgisantz. L. Fr. Adjacent. *Kelham.*

ADGNOSCERE. Lat. In the civil law. To admit; to accept. The opposite of *repudiare*. *Brissonius.* To undertake; to assume. *Id.*

ADHIBERE. Lat. In the civil law. To apply; to employ; to exercise; to use. *Adhibere diligentiam*; to use care. *Dig.* 18. 6. 11. *Adhibere vim*; to employ force. *Dig.* 4. 2. 12. 2. *Id.* 4. 2. 14. 3.

ΑΔΙΑΘΕΤΟΣ, Αδιαθετος. Gr. [from *α*, priv. and *διατιθημι*, *dispono*, to dispose.] In the civil law. Intestate; an intestate; one who

fails or neglects to *dispose* of his property; one who dies without a testament, (*disabens*). *Nov.* 22, c. 46, § 2. 'H & *adibetov* *disabens*; succession *ab intestato*. *Nov.* 118, c. 3.

ADIEU. L. Fr. Without day. A common term in the Year Books, implying final dismissal from court. Literally, "to God." Frequently written *adeu*, (q. v.) See *Aler a dieu*.

ADIEU, MONEY OF. See *Money of Adieu*.

ADIMERE. Lat. In the civil law. To take away; to remove. *Dig.* 43. 27. 1. pr. To take away; to deprive. *Id.* 39. 5. 7. 3. To take away; to take back, (as a legacy.) *Id.* 48. 10. 5.

ADIRE, Adyre. L. Fr. To say. *Kelham*.

ADIRE. Lat. In the civil law. To go to; to approach; to apply to. *Calv. Lex. Brissonius*.

To go to; to enter upon; to accept. *Cum adit hereditatem*; when he enters upon the inheritance. *Dig.* 29. 2. *Inst.* 2. 19. 4. *Bract.* fol. 227 a. *Aditus, adita*; entered upon. *Hereditas dum jacet non adita*; an inheritance while it lies not entered upon. *Id.* fol. 44 a.

ADITIO. Lat. [from *adire*, q. v.] In the civil law. An entering upon an inheritance. *Dig.* 29. 2. See *Adire*.

ADITUS. Lat. [from *adire*, to go to.] In old English law. A public road; being not only a footway, (*iter*), and horseway, (*actus*), but also a cart or carriage way; and is either *regia via*, the king's highway for all men, or *communis strata*, a common street belonging to a city or town, or between neighbors. *Co. Litt.* 56 a.

ADJACENT. [Lat. *adjacens*, from *adjacere*, to lie to, at, or upon.] Lying near to, or in the neighborhood of. 1 *Cooke's R.* 128. 4 *Peters' Cond. Rep.* 96. This word formerly signified *adjoining*, as its etymology indicates, but has not now that meaning. *Id.* *ibid.* See *Abuttals*, To lie to.

ADJECTIO. L. Lat. [from *adjective*, q. v.] In old European law. A summoning to court. *Spelman*, voc. *Abjective*.

ADJECTION. L. Fr. In old English law. Addition; addition to a name. *Yearb. M.* 9 Edw. III. 40.

ADJECTIRE. L. Lat. In old European law. To summon to court, (*citare*.) *Marculf. Formul.* lib. 1, c. 37. *Spelman. Adjectivus, adjectivus*, summoned. *Id.*

ADJICERE. Lat. In the civil law. To add; to join to. *Brissonius*.

ADJORNAMENTUM. L. Lat. In old English law. Adjournment; an, or the adjournment. *Fleta*, lib. 6, c. 4, § 1. *Id.* c. 10, § 7.

ADJORNARE. *Adjournare, Adjurnare.* L. Lat. [from Fr. *adjourner*, q. v.] In old English law. To adjourn. *Adjornement assises*; they shall adjourn the assises. *Stat. Westm.* 2, c. 30. Anciently, to summon. See *Adjourn*.

ADJORNATUR. L. Lat. [from *adjournare*, q. v.] It is adjourned; "adjourned." "*Adjornatur*, to be argued again, the first Friday in the next term." 2 *Show.* 271. "But because Holt, C. J. *hesitavit, adjournatur*." 1 *Id.* 364. See 5 *Mod.* 74. *Hardr.* 353. A common term in the old reports. *Sed adjornat' pro resolutione curia.* 1 *Show.* 154.

ADJORNATUS, Adjurnatus. L. Lat. [from *adjournare*, or *adjurnare*, q. v.] In old English law. Adjourned. *Quæ quidem recordum et processus adjornata sunt coram vobis*; which record and process are adjourned before you. *Reg. Orig.* 3.

Summoned to appear at a day; summoned to court. See *Adjourn, Adjurnatus*.

ADJOURN. [L. Lat. *adjournare, adjournare, adjurnare*, from Fr. *adjourner*, from *jour*, a day.] To put off, or postpone to another or further day, (*ad diem ponere, in ulteriorem diem rejicere. Spelman.*) To assign a new or further day to a court, or party; to dissolve a court for the present, and appoint another day for it to meet again; to continue from one day to another.* Applied also to the meetings of legislative and other public bodies, and sometimes to the process of courts. *Spelman. Cowell. Blount.* 1 *Bl. Com.* 186. *Steph. Pl.* 31. 81, (Am. ed. 1824.) See *Continuance*.

* * The proper and radical meaning of the law Latin *adjournare*, and French *adjourner*, from which this word is derived, was to assign a day to a prosecuted party, (*diem alicui dicere*), to appear in court; to summon to court, (*citare, in jus vocare*), or, in the phrase of the old Salic law, *solem alicui collocare. Spelman, voc. Adjurnare*. Thus, in the capitularies of the early French kings,—*De hominibus ecclesiasticis qui non erant adjurnati*; concerning church vassals who were not adjourned, i. e. summoned. *Capit. Carol.* lib. 5, c. 151. The Saxon

andagan had nearly the same sense. *LL. Edw. Sen.* c. 1. *Spelman*. The day thus given was the *first day* of the party's appearance, answering to the *return day* of the process by which he was summoned. The use of the word *adjournamentum* in the sense of a summoning to court, the assignment of a day to appear in court, (*diei dictio, citatio, evocatio, denunciatio*.) is frequent in the laws of the Burgundians. *Spelman, ub. sup.* See *Adjournamentum*.

The French *adjourner*, or *ajourner*, has retained this original sense, but the English *adjourn*, and *adjournment*, have materially departed from it. The idea of a day given or assigned has been in some measure preserved in these words; but it is never a *first day* of appearance, but always a *subsequent day* after an appearance once made; a day after a dismissal from court; the idea of *dismissal* being in fact the primary one. The English words are used, in short, merely in the sense of *postponement* to another day or time, and frequently in that of a final dissolution *without any day*. The entire loss of original meaning appears strikingly in the familiar modern phrase "to adjourn without day," which once would have been an absurdity in terms.

ADJOURNAL. In Scotch law and practice. A term applied to the records of criminal courts. Books of Adjournal, (O. Scotch, "bukis of adiornale,") were the original records of criminal trials, many of which are now lost. *Pitcairn's Crim. Trials*, vol. 1, part 2, p. 225. An act of *adjournal* is an order of the Court of Justiciary, entered on its minutes. *Shaw's R. Appendix*.

ADJOURNATUR. L. Lat. [from *adjournare*, to adjourn.] It is adjourned. A word with which the old reports very frequently conclude a case. 1 *Ld. Raym.* 602. 1 *Show.* 7. 1 *Leon.* 88. See *Et adjournatur, Adjournatur*.

ADJOURNED TERM. In practice. A continuance, by adjournment, of a regular term. Thurman, C. J. 4 *Ohio St. R.* 473. Distinguished from an "additional term," which is a distinct term. *Id. ibid.* An *adjourned term* is a continuation of a previous or regular term; it is the same term prolonged, and the power of the court over the business which has been done, and the entries made at the regular term, continues. 22 *Alabama R.* 57.

ADJOURNER. L. Fr. [from *jour*, a day.] To give, or assign a day; to sum-

mon to appear at a day. *Spelman*, voc. *Adjurnare*.

To give another day, that is, a day after a day of appearance; to adjourn. L. Fr. *Dict.*

ADJOURNMENT. L. Fr. and Eng. [L. Lat. *adjournamentum, adjurnamentum*.] A putting off to another or further day, (*in ulteriorem diem*.) *Spelman*, voc. *Adjurnare*. *Cowell. Jacob.* An assignment of a new or further day for a meeting or proceeding. See *Adjourn*.

ADJUSTER, Adjuster. L. Fr. To put to; to add or reckon; to make even; to set right. L. Fr. *Dict.*

ADJUDICARE. Lat. [from *ad*, to, and *judicare*, to judge; L. Fr. *adjudger*.] In the civil law. To adjudge; to determine; to decree to a person; to assign by judgment, i. e. by the act of a court. *Adjudicatum*; adjudged. *Inst.* 4. 17. 7. See *Adjudicatio*.

In old English law, to forjudge. *Adjudicetur medius de feodo et servitio suo*; the mesne shall be forjudged of his fee and service. *Stat. Westm.* 2, c. 9. See *Forjudicare*.

ADJUDICATIO. Lat. [from *adjudicare*, q. v.] In the civil law. An adjudication; an assignment by judgment; the adjudging of the ownership of a thing, by a court. One of the legal modes of obtaining property, viz. by the decision of a judge, which takes place in the three actions for partition, viz. *familie herciscundæ, communi dividundo*, and *finium regundorum*, (qq. v.) In these actions, the judge has the right to adjudge to one or the other co-heir or part-owner, the exclusive proprietorship of a thing hitherto held in common, and his judgment transfers, *ipso jure*, the property in the thing adjudged. 1 *Mackeld. Civ. Law*, 286, § 271. *Statim ejus fit cui adjudicatum est*; it immediately becomes his to whom it is adjudged. *Inst.* 4. 17. 7.

ADJUDICATION. [Lat. *adjudicatio*, from *adjudicare*, q. v.] The act of giving judgment, or pronouncing a sentence or decree; the judgment itself, so given.

A settlement by judgment, decree or sentence. *Stat.* 16 & 17 *Car.* II. c. 10. *Cowell*.

ADJUDICATION. In Scotch law. A species of diligence, or process for transferring the estate of a debtor to a creditor, carried on as an ordinary action before the court of session. *Ersk. Inst.* b. 2, tit. 12,

§§ 39—55. A species of judicial sale, redeemable by the debtor. *Id.* §§ 42—55. See *Bell's Dict.* A decret of the lords of session, adjudging and appropriating a person's lands, hereditaments, or any heritable right, to belong to his creditor, who is called the *adjudger*, for payment or performance. *Forbes' Inst.* part 3, b. 1, ch. 2, tit. 6.

ADJUNCTIO. Lat. [from *adjungere*, to join to, to annex.] In the civil law. Adjunction; a species of *accessio*, whereby two things belonging to different proprietors are brought into firm connexion with each other; such as interweaving, (*intertextura*;) welding together, (*adferrumatio*;) soldering together, (*applumbatura*;) painting, (*pictura*;) writing, (*scriptura*;) building, (*inædificatio*;) sowing, (*satio*;) and planting, (*plantatio*.) *Inst.* 2. 1. 26—34. *Dig.* 6. 1. 23. 1 *Mackeld. Civ. Law*, 281, § 268. See *Accessio*.

ADJUNCTUM. Lat. Incident. See *Extincto subjecto, &c.*

ADJURNAMENTUM. L. Lat. [from *adjurnare*, q. v.] In old European law. A summoning to court at a certain day; the assignment of a certain day to appear in court, (*diei dictio, citatio, in jus vocatio, monitio, denunciatio, conventio*;) adjournment, in the original sense. *Spelman*, voc. *Adjurnare*. *Skene de Verb. Signif.* voc. *Adjurnatus*.

ADJURNARE. L. Lat. [from Fr. *adjourner*.] In old European law. To give or assign a day to any one, (*diem alicui dicere*;) to summon to court, (*citare, in jus vocare*.) Corresponding with the Sax. *andagan*, to put to a day, (*ad diem ponere*.) *Spelman*.

Adjurnatus; summoned or called to a certain day. *Id.* *Skene de Verb. Sign.*

ADJUSTMENT. In marine insurance. Settlement; settlement of a loss. The *adjustment* of a loss is the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions are made, is entitled to receive under the policy, and the fixing the proportion of this which each underwriter is liable to pay. 2 *Marsh. on Ins.* 529, ch. xv. A kind of account stated, or agreement between the parties, as to what the particular average, or partial loss shall amount to. *Smith's Merc. Law*, 244. 2 *Archb. N. Prius*, 200. 3 *Kent's Com.* 242, 335.

ADMALLARE. L. Lat. [from *ad*, to,

and *mallum*, a court.] In old European law. To cite or summon to court; to sue; to attach. *L. Salic.* tit. 59. *Marculf.* lib. 1, c. 21. *Spelman.* *Id.* voc. *Attachiare*.

ADMEASUREMENT. [L. Lat. *admensuratio, amensuratio*.] A measuring out; an assignment by measure; an adjustment, or allotment according to certain fixed limits, or in certain proportions.

The name of the writ for making such assignment or adjustment, and which lay at common law against persons who usurped more than their share of any right or privilege. See *infra*.

ADMEASUREMENT OF DOWER, Writ of. [L. Lat. *breve de admensuratione dotis*.] In English law. The name of a writ to which an heir is entitled, where a man's widow, after his decease, holds from the heir more land, as dower, than of right belongs to her; or where the heir being within age, or his guardian, has assigned to her more than she ought to have. The operation of the writ, (which, however is, in a great measure, obsolete,) is to fix the amount of dower to which the widow is entitled, and to restore the overplus to the heir. *Reg. Orig.* 171 a. *F. N. B.* 148 *F. Termes de la Ley.* 2 *Bl. Com.* 136. 3 *Id.* 183. 2 *Crabb's Real Prop.* 145, § 1148. 5 *Richardson's Eq. R.* 254.

This writ has been abolished in New-York, and the term *admeasurement of dower* is there used to signify the statutory remedy for the assignment of dower, either by the widow, where her dower has not been assigned to her, or by the heirs, in cases where the widow has neglected to apply for her dower. 2 *N. Y. Rev. Stat.* [488,] 400.

ADMEASUREMENT OF PASTURE, Writ of. [L. Lat. *breve de admensuratione pasturæ*.] In English law. A writ which lies between those that have common of pasture appendant, or by vicinage, in cases where any one or more of them surcharges the common with more cattle than they ought. *Bract.* fol. 229 a. *Reg. Orig.* 156 b. *F. N. B.* 125 B. *Termes de la Ley.* 3 *Bl. Com.* 238. 1 *Crabb's Real Prop.* 318, § 358. The writ is directed to the sheriff, reciting a complaint that the defendant has *surcharged*, (*superoneravit*;) the common, and commanding the sheriff to admeasure and apportion it. 3 *Bl. Com.* 238. Under this process, a jury, with the sheriff, apportioned the quantity of cattle to the extent of the ground, and the num-

ber of the proprietors. 3 *Kent's Com.* 419. In most of the United States, this remedy is now superseded either by the action of ejectment, or action on the case. *Id. ibid.* See *Common, Surcharge*.

ADMENSURARE, Amensurare. L. Lat. [from *ad*, to, and *mensura*, measure.] In old English law. To admeasure. *Breve de communi pastura admensuranda*; a writ for admeasuring common of pasture. *Reg. Orig.* 157. Bracton writes the word, *amensurare*, (q. v.)

ADMENSURATIO, Amensuratio. L. Lat. [from *admensurare*, q. v.] In old English law. Admeasurement. *Reg. Orig.* 156, 157. *Admensuratio nihil aliud est quam redactio ad mensuram*; admeasurement is nothing more than reducing to measure. *Fleta*, lib. 4, c. 23, § 2. See *Admeasurement*. In Bracton, the word is written *amensuratio*, (q. v.)

ADMEZATORES. L. Lat. In old Italian law. Persons chosen by the consent of contending parties, to decide questions between them. Literally, mediators (from Ital. *mezzatura*, from *mezzo*, middle.) *Spelman*.

ADMINICLE. [Lat. *adminiculum*, q. v.] In Scotch law. A collateral deed or writing, referring to another which has been lost, or tending to establish its existence, or the terms of it, and which it is in general necessary to produce, before the tenor of the lost deed can be proved by parol evidence. *Ersk. Inst.* b. 4, tit. 1, § 55. *Bell's Dict.*

Used as an English word, in the statute of 1 Edw. IV. c. 1, in the sense of aid, or support.

ADMINICULAR. [from *adminiculum*, q. v.] Auxiliary to. "The murder would be *adminicular* to the robbery," [i. e. committed to accomplish it.] *Story, J.* 3 *Mason's R.* 121.

ADMINCULATOR. L. Lat. [from *adminiculum*, q. v.] An officer in the Romish church, who administered to the wants of widows, orphans, and afflicted persons. *Spelman*.

ADMINICULUM. Lat. In the civil and old English law. Aid or support. Sometimes rendered "adminicle," (q. v.) *Non in toto sine adminiculo relinquebant*; they did not leave them wholly without assistance. *Inst.* 3. 2. 7. *Juris adminiculum*; the support of the law. *Dig.* 26. 7. 39. 9. *Cum juris adminiculo concurrente*; with the support of right concurring. *Bract.* fol. 38 b. 44 a.

A species of evidence, not conclusive in itself, but becoming so when conjoined with other proofs; [cumulative or corroborative testimony.] *Best on Presumptions*, 13, note (f). See *Adminicle*.

That which belongs to a thing as accessory; that which is necessary to its complete use and enjoyment. 1 *Mackeld. Civ. Law*, 348, note (d).

Whatever appertains to any judicial proceedings, writs, records, &c. *Fleta*, lib. 2, c. 3, § 4. *Reg. Jud.* 30.

ADMINISTER. [from Lat. *administrare*, q. v.] To manage; to take charge and dispose of the personal property of an intestate, or a testator having no executor, according to law.* Used in this sense in the statute 31 Edw. III. stat. 2, c. 11. *Cowell.* 2 *Reeves' Hist. Eng. Law*, 387. Applied in the civil law to the management of the estate of a minor. See *Administrare*. Held to import alteration, change or conversion of the property in goods. 4 *Florida R.* 66, 67, 84. 5 *Randolph's R.* 51.

In modern practice. To perform the office of *administrator*, (q. v.)

To give; to cause to be taken, as medicine, poison. Poison may be administered without being directly delivered to the party poisoned. 4 *Carr. & P.* 369. 1 *Moody's C. C.* 114. See 28 *Mississippi R.* 267.

ADMINISTRACO. An old contraction of *administratio*. So, *administracon*, for *administration*. *Towns. Pl.* 26. 1 *Instr. Cler.* 4.

ADMINISTRARE. Lat. In the civil law. To manage, or conduct; to administer; to take, or have charge of. *Cod.* 5. 43. 6. *Tutelam administrare*; to undertake a guardianship. *Inst.* 1. 25. 9. *Cod.* 5. 51. 10. *Ut solus administret*; to have the sole administration or management. *Inst.* 1. 24. 1. Used in the same sense with *gerere*. *Id. ibid.* *Qui negotia administrat*; who manages the affairs, or transacts the business. *Dig.* 3. 5. 6. 12. For the various applications of this word, see *Brissonius*.

To execute an office. *Cod.* 4. 2. 3.

To govern; to have or conduct the government. *Calv. Lex. Rempulicam administrare.* *Cod.* 11. 30.

In the common law. To administer; to take charge and dispose of the effects of an intestate. *Plene administravit* (q. v.); he has fully administered. See *Administratio*.

ADMINISTRATIO. Lat. [from *administrare*, q. v.] In the civil law. Management, conduct or charge; administration; government. Management of affairs generally. *Dig.* 32. 34. 1.

Management of the estate or affairs of a minor or ward. *Inst.* 1. 24. 2. *Id.* 1. 26. 7. *Cod.* 5. 37. *Id.* 5. 43. 7, 8. *Id.* 5. 51. 9, 11.

Management by an attorney. *Dig.* 17. 1. 60.

Management of public affairs. *Cod.* 11.

30. Execution of an office. *Dig.* 50. 4.

14. 3. *Id.* 50. 8, *Cod.* 11. 30. 2. *Id.* 1.

49. *Id.* 1. 53. 1. *Id.* 12. 8. 2.

In old English law. Management, conduct, disposal or charge of property or affairs in general; power of disposal. *Fleta*, lib. 2, c. 64, § 8; c. 70, § 1. *Id.* lib. 3, c. 3, § 10.

Management, by one of full age, of his own affairs. *Bract.* fol. 11 b.

Management, by an attorney, of the business of his principal. *Id.* fol. 41 b.

Management, conduct or charge, and disposition of the property of a deceased person. *Plena administratio*; full administration. *Mem. in Scacc.* H. 5 Edw. I. *Libera administratio*; free administration. *Id.* H. 7 Edw. I.

Management by an executor. *De bonis defuncti nullam habent administrationem*; they have no administration of the goods of the deceased. *Fleta*, lib. 2, c. 62, § 10.

ADMINISTRATION. [Lat. *administratio*, q. v.] The management and disposition of the estate of an intestate, or of a testator having no executor.* 2 *Bl. Com.* 496. 2 *Steph. Com.* 232. 2 *Kent's Com.* 409. 2 *Reeves' Hist. Eng. Law*, 387.

The right to the management of such an estate, conferred by what are termed letters of administration, (q. v.) Used in this sense in the common expressions "to grant administration," "to take out administration."

This word, though ordinarily confined in its application to the management of an estate by an *administrator*, properly so called, includes also, in a larger sense, management by an *executor*; the strictly corresponding term *execution* not being now in use. Anciently, on the contrary, both terms were used interchangeably and indifferently; administration (*administratio*) being applied to executors, and execution (*executio*) to administrators. *Fleta*, lib. 2, c. 57, § 10. *Id.* lib. 2, c. 62, § 10. *Bract.*

fol. 60 b. *Yearb.* T. 4 Edw. II. 108. *Bendl.* pl. 3. See *Executio bonorum*.

ADMINISTRATIO CUM TESTAMENTO ANNEXO. Administration with the will annexed. Administration granted in cases where a testator makes a will, without naming any executors; or where the executors who are named in the will are incompetent to act, or refuse to act; or in case of the death of the executors, or the survivor of them. 2 *Bl. Com.* 503, 504. 2 *N. Y. Rev. Stat.* [71], 15, § 14.

ADMINISTRATIO DE BONIS NON, or DE BONIS NON ADMINISTRATIS. Administration of the goods not administered. Administration granted for the purpose of administering such of the goods of a deceased person as were not administered by the former executor or administrator. 2 *Bl. Com.* 506.

ADMINISTRATIO DURANTE ABSENTIA. Administration during absence. Administration granted during the absence of an executor. 2 *Bl. Com.* 503. 1 *Lutw.* 342. See 8 *Cranch's R.* 9. In New-York, this is a case for granting special letters *ad colligendum*. 2 *Rev. Stat.* [76], 19, § 38.

ADMINISTRATIO DURANTE MINORE ETATE. Administration during minority. Administration granted during the minority of an executor. 2 *Bl. Com.* 503. 5 *Co.* 29, 30. In New-York, this is a case for granting administration *cum testamento annexo*. 2 *Rev. Stat.* [69], 13, § 3. *Id.* [71], 15, § 14.

ADMINISTRATIO PENDENTE LITE. Administration during the suit. Administration granted during the pendency of a suit touching the validity of a will. 2 *Bl. Com.* 503. In New-York, this is a case for granting special letters *ad colligendum*. 2 *Rev. Stat.* [76], 19, § 38.

ADMINISTRATOR. Lat. and Eng. [from *administrare*, q. v.] In the civil law. A manager or conductor of affairs, especially the affairs of another, in his name or behalf. A manager of public affairs in behalf of others. *Calv. Lex.* A public officer, ruler or governor, (*præses*, Gr. ἀρχων.) *Nov.* 95, gl. *Cod.* 12. 8.

In old English law. A manager; one who took care or had charge of another's property or affairs. *Quod nunquam fuit ballivus ejus, vel mercator, vel denariorum suorum receptor, vel administrator*; that he never was his bailiff, or merchant, or receiver of his moneys, or manager. *Fleta*, lib. 2, c. 70, § 9.

In modern law. He who administers; he who has authority to administer, that is, to manage and dispose of the estate of an intestate, or testator having no executor; he to whom the right of administration has been granted by law. See *Administer, Administration*. In the statute of 31 Edw. III. st. 2, c. 11, by which the law of administration was established, the administrator is called the *deputy* of the ordinary by whom he was appointed. 2 *Reeves' Hist. Eng. Law*, 387. *Thelwall's Dig.* lib. 1, c. 19.

ADMINISTRATRIX. L. Lat. and Eng. [from *administrare*, q. v.] A female who administers, or to whom the right of administration has been granted. See *Administer, Administration*.

ADMIRAL. [Fr. *amerel*, *amiral*; L. Lat. *admirallus*, *admiralis*, or *amiralius*; from Gr. ἀμυράλιος, from Arab. *amir*, a chief, and Gr. ἅλιος, of the sea.] A naval commander, officer or magistrate; either chief, or subordinate.* *Spelman*, voc. *Admiralius*. Called also anciently *capitaneus et custos maris*, (captain and warden of the sea;) *præfectus maris*, sive *classis*, (governor of the sea, or of the fleet;) *archithalassus*, or *thalassiarcha*, (ruler of the sea, that is, of naval forces or affairs.) *Chart.* 48 *Hen. III. Co. Litt.* 260 b. In the Digests, mention is made of one Seius Saturninus who is styled *archigubernus ex classe Britannica*. *Dig.* 36. 1. 46.

The title of *admiral* is now considered as exclusively belonging to naval commanders of the highest rank. The office of admiral of England, or Lord high admiral, (*dominus magnus admirallus Angliæ*), created in the reign of Edward I. is still recognised, although it has latterly been exercised by commissioners termed Lords of the Admiralty. *Spelman*, *ub. sup.* See 1 *Hale's Hist. Com. Law*, (Runnington's ed.) 36, note. *P. Cyclopaedia*. An important feature of this office was the judicial cognizance of maritime causes which belonged to it, out of which has grown the present court of admiralty. Neither the office nor title has been adopted in the United States. *Spelman*, in his elaborate exposition of this word, has traced its origin to the *ameralius* of the Eastern empire. See *Ameralius*.

ADMIRAL. [L. Lat. *admiralius*.] In European law. An officer who presided over the *admiralitas*, or *collegium ammi-*

ralitatis. *Loccenius de Jur. Mar.* lib. 2, c. 2, § 1. See *Admiralitas*.

ADMIRALITAS, Ammiralitas. L. Lat. Admiralty; the admiralty, or court of admiralty. *Clerke's Prax. Cur. Adm.* See *Admiralty*.

In European law. An association of private armed vessels for mutual protection and defence against pirates and enemies, (*navium privatorum coitio adversus piratas aut alios invasores*.) *Grot. de Jur. Belli*, lib. 2, c. 12, § 4. *Loccenius de Jur. Mar.* lib. 2, c. 2. Called by Loccenius, *societas navalis bellica*, and *collegium ammiralitatis*. *Id. ibid.* It corresponded with the Greek σμύλεια, or δρεπλοια. *Grot. de J. B. ubi supra*.

ADMIRALTY, or COURT OF ADMIRALTY. [L. Lat. *admiralitas*, or *curia ammiralitatis*.] The court of the admiral; a maritime court established in England about the reign of Edward III. and held before the Lord high admiral or his deputy, a judge of the admiralty, and now always held before the judge; having cognizance of all maritime causes, and injuries committed on the high seas, or on those parts of the coast which are not within the body or limits of an English county, (*infra corpus comitatus*), or within the jurisdiction of the common law. *Spelman*, voc. *Admiralius*. 1 *Hale's Hist. Com. Law*, 41—51. 3 *Bl. Com.* 69. 4 *Id.* 268. 2 *Steph. Com.* 435, 724. 4 *Id.* 330. 2 *Gallison's R.* 398. 1 *Sumner's R.* 553—566. It is a court of criminal and civil jurisdiction, the latter being also twofold, and holden before distinct tribunals; one, the ordinary court for deciding controversies relating to contracts made at sea, [or maritime contracts,] called the *Instance court*, (q. v.); the other, called the *Prize court* (q. v.), for determining the right to maritime captures and seizures. 1 *Wooddes. Lect.* 83, 84. 1 *Kent's Com.* 353, 354. See *Maritime causes*. By the statute of 3 & 4 Will. IV. c. 36, the criminal jurisdiction of this court was conferred upon the new court established in London, called the "Central criminal court;" and its civil jurisdiction has been extended, and its practice materially modified by the later statute of 3 & 4 Vict. c. 65. See 3 *Steph. Com.* 727. 4 *Id.* 331. Its proceedings are generally according to the course and method of the civil law, like those of the ecclesiastical courts, upon which account it is usually held at Doctors' Commons, in London; but it is no court of record, any

more than the spiritual courts. 3 *Bl. Com.* 69. 3 *Steph. Com.* 436. 2 *Chitt. Gen. Pr.* 508—539.

In the United States, the jurisdiction of the admiralty is not confined to tide-waters, but extends to all public navigable lakes and rivers, where commerce is carried on between different States, as well as foreign nations. 20 *Howard's R.* 296, 301. 12 *Id.* 443. The district courts of the United States possess all the powers of courts of admiralty, whether considered as instance or as prize courts; no distinction or division in that respect being recognised as in England. 3 *Dallas' R.* 6. And see further, 1 *Ken's Com.* 353—380. *United States Digest*, Admiralty.

ADMISSION. [Lat. *admissio*, from *admittere*, from *ad*, to, and *mittere*, to send.] A taking, or letting in; permission to exercise certain rights or privileges, to fill an office, &c.; as the *admission* of an attorney or counsellor to practice; the *admission* of an individual as a member of a corporation; the *admission* of a clerk to a benefice, &c.

Acknowledgment, allowance, concession, consent; as the *admission* of a fact in evidence; the *admission* of service of papers in practice. Strictly, *admission* refers to something already done; *consent*, to something proposed to be done. See *Consent*.

ADMISSION. In English ecclesiastical law. The act of the bishop, who, on approval of the clerk presented by the patron, after examination, declares him fit, (or able, *habilem*,) to serve the cure of the church to which he is presented, by the words *admitto te habilem*; I admit thee able. *Co. Litt.* 344 a. 4 *Co.* 79. 1 *Crabb's Real Prop.* 138, § 123.

ADMISSIONALIS. L. Lat. In European law. An usher. *Spelman*.

ADMITTANCE. In English law. The form of giving seisin of a copyhold estate, corresponding with livery of seisin of a freehold; one of the formalities necessary for the conveyance of copyhold, the other two being surrender, and presentment.* 2 *Bl. Com.* 366—370. 2 *Steph. Com.* 52, 54. *Burton's Real Prop.* 390, pl. 1263. See *Copyhold*, *Surrender*.

ADMITTERE. Lat. [from *ad*, to, and *mittere*, to send.] In the civil law. To admit; to receive; to accept; to allow. *Dig.* 14. 19. 11. 1. *Brissonius*. *Calv. Lex.*

To admit; to acknowledge. *Id.*

To commit; as an offence. *Dig.* 4. 6. 38. pr. *Brissonius*.

ADNEPOS. Lat. In the civil law. A great grandson's grandson. *Inst.* 3. 6. 5. *Dig.* 38. 10. 7. *Id.* 38. 10. 10. 16. Written in the Florentine Pandects, *atnepos*.

ADNEPTIS. Lat. In the civil law. A great grand-daughter's grand-daughter. *Inst.* 3. 6. 5. *Dig.* 38. 10. 7. *Id.* 38. 10. 10. 16. Otherwise written, *atneptis*.

ADNIHILARE. L. Lat. [from *ad*, to, and *nihil*, nothing.] In old English law. To reduce to nothing; to treat as nothing; to hold as, or for nought; to avoid. *Judicia in curia regis reddita non adnihilentur, sed stent in suo robore quousque per errorem aut attinctam adnullentur*; judgments rendered in the king's court shall not be held for nought, but shall stand in force until they be annulled by error or attain. 2 *Inst.* 360. *Dedici poterit vel adnihilari per quietam clamanciam*; may be denied or avoided by quit claim. *Fleta*, lib. 2, c. 63, § 1.

Adnichile is used in the statute 28 Hen. VIII. c. 7; and *adnichilate* by old English writers. *Richardson's Dict.*

ADNOTATIO, Annotatio. Lat. [from *adnotare*, to mark upon.] In the civil law. The subscription of a name or signature to an instrument. *Cod.* 4. 19, 5, 7. Otherwise called *subnotatio*.

A rescript of the prince or emperor, signed with his own hand, or sign manual. *Cod.* 1. 19. 1. *Id.* 1. 2. 10. "In the imperial law, casual homicide was excused by the indulgence of the emperor, signed with his own sign-manual, *annotatione principis*." 4 *Bl. Com.* 187. *Cod.* 9. 16. 5.

ADNULLARE. L. Lat. To annul. See *Adnihilare*.

ADOLESCENTIA. Lat. [from *adolescere*, to grow.] In the civil law. Adolescence, or youth; the age between puberty and majority; commencing at fourteen in males, and twelve in females. 1 *Mackeld. Civ. Law*, 136, § 126.

ADONQUES, Adonque, Adunque, Adoun. L. Fr. Then. *Litt.* sect. 157. *Kelham*.

ADOPTIO. Lat. [from *adoptare*, which from *ad*, to, and *optare*, to choose.] In the civil law. A taking or choosing of another's child as one's own;* adoption. This was done in two ways; by imperial rescript, (*principali rescripto*), which gave authority to adopt persons of either sex, who were *sui juris*, (i. e. independent;)

and by authority of the magistrate, (*impe-rio magistratûs*), which allowed the adoption of persons actually under the power of their parents. *Inst.* 1. 11. 1. The last of these methods was properly *adoptio*, or adoption, the former being termed *arrogatio*, or *adrogatio*, (q. v.) *Id. ibid. Dig.* 1. 7. 1. *Cod.* 8. 48. The adoption of children is still regulated by law in Germany and France, but is not recognised in English or American law.

ADOPTION. See *Adoptio*.

ADOPTIVUS. Lat. [from *adoptare*, to adopt.] In the civil law. Adoptive. Applied both to the parent adopting, and the child adopted. *Inst.* 2. 13. 4. *Id.* 3. 1. 10—14.

ADPLUMBARE. Lat. [from *ad*, to, and *plumbum*, lead.] In the civil law. To solder; to unite by soldering. *Adplumbatum*; soldered. *Dig.* 6. 1. 23. 5. *Adplumbatura*; soldering. See *Applumbatura*.

ADPROMISSOR. Lat. [from *ad*, to, and *promissor*.] In the civil law. A surety; one who binds himself for another, or in addition to another; one who engages to do the same thing that the promissor does. *Dig.* 45. 1. 52.

ADQUIRERE. Lat. [from *ad*, to, and *querere*, to seek.] In the civil and old English law. To acquire; to gain. See *Acquirere*. *Adquiritur possessio*; possession is acquired. *Fleta*, lib. 4, c. 18, § 2. *Res corporales animo adquiruntur et corpore, per traditionem*; corporeal things are acquired by the mind (will or intent,) and the body, (manual act,) by delivery. *Id. ibid.*

ADRECTARE, Adretiare, Addressare. L. Lat. [from *ad*, to, and *rectum*, right; *ad rectum ire, recto stare*.] In old English law. To do right; to satisfy; to make amends. *Gerv. Dorobern.* A. D. 1170. *Cowell.* See *Ad rectum*.

ADRESSER. L. Fr. To prepare. *Kelham*.

ADRHAMIRE, Arhamire, Arramire, Arramare. L. Lat. [from old Fr. *arramir*.] In old European law. To undertake, declare, or promise solemnly; to pledge; to pledge one's self to make oath. *Form. Vett.* sect. 1. *Bignonius. Spelman.* See *Arramare*.

ADS, Adsm., Ats. In practice. A contraction of *ad sectam*, used in entitling papers on the part of the defendant in a suit; as, "C. D. ads. A. B." See *Ad sectam*.

ADSALLIRE. Assalire. L. Lat. [from

Fr. *assaillir*, from Lat. *assilire*, to assail.] In old European law. To assail or set upon; to make an assault or attack upon one, (*impetum in aliquem facere, adoriri, invadere*.) *Spelman. Marculf.* lib. 1, form. 29, 39, cited *ibid.* L. *Salic.* tit. 16, § 2.

ADSCENDENTES. Lat. In the civil law. Ascendants. *Dig.* 23. 2. 68. *Cod.* 5. 5. 6.

ADSCRIBERE, Ascribere. Lat. [from *ad*, to, and *scribere*, to write.] In the civil law. To add in writing, or by writing; as by a codicil. *Dig.* 28. 4. 5.

To add one's name to an instrument as a witness. *Dig.* 28. 2. 22. 4. *Cod.* 8. 38. 14. pr.

To annex or bind to, in writing. See *Adscriptus*.

ADSCRIPTUS, Ascriptus. Lat. [from *adscribere*, q. v.] In the civil law. Added, joined, annexed or bound by or in writing; enrolled, registered; united by writing or enrollment; united, joined, annexed, bound to, generally. *Servus colonæ adscriptus*; a slave annexed to an estate as a cultivator. *Dig.* 19. 2. 54. 2. *Fundus adscriptus*; an estate bound to, or burdened with a duty. *Cod.* 11. 2. 3.

ADSCRIPTUS GLEBÆ. Lat. In the civil law. Annexed to the soil. Slaves, in the middle ages, were *adscripti glebæ*, and were conveyed by sale, together with the farm or estate to which they belonged. 1 *Robertson's Charles V.* Appendix, note ix. In Scotland, as late as the reign of George III. laborers in collieries and salt works were bound to the coal-pit or salt-work in which they were engaged, in a manner similar to that of the *adscripti* of the Romans. *Bell's Dict. voc. Coaliers and Salters*.

ADSCRIPTITIUS, Adscripticius, Ascriptitius. Lat. [from *adscriptus*, q. v.] In the civil law. United, annexed, or bound to. *Adscriptitii*, (Gr. *ἰσχυροπαροί*), were a class of cultivators who were annexed to the land, without the power of leaving it, and whose earnings or *peculium* belonged to their owners or masters, (*τοῖς δεσπόταις ἀνέκει.*) *Cod.* 11. 47. 19. There was very little difference between them and slaves. See *Cod.* 11. 47. 21. And see further as to their condition. *Id.* 23. 24. *Nov.* 54. *Const. Imp. Just.* 2.

ADSCRIPTITII GLEBÆ. Lat. In old English law. Annexed, bound or adstricted to the soil; employed in cultivating it, and in performing other rural services for

the owner. *Hargr. Co. Litt.* note 1, to lib. 2. "Ascriptitious to the soil." *Blackst. Law Tr.* 96, 97, 98. A term applied to tenants by villein socage, and commonly supposed to denote a condition approaching nearer to that of slaves than of freemen. *Harg. Co. Litt. ub. sup.* But, according to Bracton, they were so called because, so long as they did the appointed services, they had the *privilege not to be removed from the soil, (gaudent privilegio quod a gleba amoveri non poterunt,)* and were in fact freemen. *Bract. fol. 7 a. 209 a. Id. fol. 4 b.* See *Fleta*, lib. 1, c. 8, § 3. The term is also used in old Scotch law. *Skene de Verb. Sign. voc. Bondagium.*

ADSECURARE. L. Lat. [from *ad*, to, and *securus*, secure.] In old English law. To make secure; to secure by giving pledges or sureties; (*pignore vel fidejussione interposita securum facere.*) *Spelman. Chart. apud Hoved. an. 1174, cited ibid.*

In commercial law. To insure or assure. See *Adsecuratio*.

ADSECURATIO, Assecuratio. L. Lat. [from *adsecurare*, q. v.] In commercial law. Assurance; insurance. *Loccen. de Jur. Mar.* lib. 2, c. 5, §§ 1—6.

ADSESSORES, Assessores. Lat. [from *ad*, to, and *sedere*, to sit by.] In the civil law. Persons who were employed to assist magistrates and judges with advice in the discharge of their offices. *Dig.* 1. 22. *Cod.* 1. 51. Called also *comites* and *consilarii*. *Dig.* 1. 22. 4, 5. See *Assessores*.

In old English law. Assessors or assessors. An ancient title of masters in chancery. *Treatise of the Masters of the Chancery; Harg. Law. Tr.* II.

ADSIGNARE. Lat. [from *ad*, to, and *signare*, to mark.] In the civil law. To affix a seal to an instrument; to seal it; to seal in company with others. *Dig.* 26. 8. 20. See *Assignare*.

To assign; to designate for a specific purpose. See *Assignare*.

ADTRACTUS. L. Lat. [from *attrahere*, to draw to.] In old European law. A thing acquired or purchased; a purchase; (*comparatum, acquisitum, perquisitum.*) *Spelman.* A term of frequent occurrence in Marculfus, and ancient charters.

ADTUNC. L. Lat. Then. 1 *Ld. Raym.* 123. 2 *Show.* 284. *Adtunc existens*; then being. *Fleta.* 28.

ADULT. [Lat. *adultus*, from *adolescere*.] In the civil law. One who has arrived at the age of *adolescentia*, or youth. A term

applied to males after the age of fourteen, and to females after twelve. 1 *Mackeld. Civ. Law.* 136, § 126. See *Adolescentia*.

In the common law. One who is of full age. 1 *Swanst. R.* 553, 557—559.

ADULTER. Lat. [see *adulterium*.] In the civil law. An adulterer. *Dig.* 48. 5. 4. pr. *Id.* 48. 5. 15. 8. One who corrupts the wife of another, (*qui alienam matremfamilias corrumpit.*) *Id.* 50. 16. 225.

ADULTERA. Lat. [see *adulterium*.] In the civil law. An adulteress; a woman guilty of adultery. *Dig.* 48. 5. 4. pr. *Id.* 48. 5. 15. 8.

ADULTERARE. Lat. In the civil law. To adulterate; to corrupt; to falsify; to counterfeit or forge. *Adulterare rationes*; to forge accounts. *Dig.* 11. 3. 1. 5.

ADULTERATOR. Lat. [from *adulterare*, to corrupt or forge.] In the civil law. A forger; a counterfeiter. *Adulteratores monetæ*; counterfeiterers of money. *Dig.* 48. 19. 16. 9.

ADULTERINE. [from Lat. *adulterinus*, q. v.] In old English law. Unlawful; unlicensed; unauthorized. Guilds or companies established without the royal license were called *adulterine*. In the year 1180, sixteen of these *adulterine* guilds were fined by Henry II. *Madd. Hist. Erch.* A. D. 1180. *Smith's Hist. London*, vol. i. p. 179.

ADULTERINUS. Lat. In the civil law. Illicit; unlawful; illegitimate; spurious; false or forged. *Adulterina moneta*; counterfeit money. *Dig.* 48. 13. 6. 1. *Adulterinum testamentum*; a forged will. *Id.* 48. 10. 6. pr.

In old English law. Corrupt; spurious; counterfeit; forged. *Sigillum adulterinum*; a spurious or counterfeit seal. *Fleta*, lib. 3, c. 14, § 4. *Id.* lib. 4, c. 10, § 3.

Unlawful; unauthorized; illegal; adulterine. *De castris adulterinis quæ ab initio guerra constructa fuerunt*; concerning adulterine castles which have been built since the beginning of the war. *Claus.* 2, *Hen.* III. m. 11, d. *Castella adulterina quæ tempore regis a quocunque constructa sunt, diruentur*; adulterine castles which have been built during the king's reign by whomsoever, shall be demolished. *Matt. Par.* A. D. 1153. *Magna Carta*, Hen. I. A. D. 1217, c. 47. *Blackst. Mag. Cart.* Introd. lxii. lxiii.

ADULTERIUM. Lat. [from *ad*, to, and *alter*, another; quasi *adulterium*.] In

the civil law. Adultery; the crime of corrupting a married woman, or the wife of another. So called, according to Festus, *ex eo quod ad alterius torum accedatur*; because the offender goes to the bed of another; or, according to others, because the adulterer betakes himself *ad alteram*; (to another woman.) See *Calv. Lex*. The Roman lawyers distinguished between *adulterium* and *stuprum* (q. v.) but the *Lex Julia* used both terms indifferently, to express the same offence. *Dig.* 50. 16. 101. *Id.* 48. 5. 6. 1. *Id.* 48. 5. 34.

In old English law. A fine imposed for the offence of adultery and fornication, (Sax. *legerwite*, or *lairwite*, q. v.); the privilege of imposing such a fine, which the lords of some manors possessed. *Spelman. Domesday Book*, cited *Ibid.*

ADULTERY. [Lat. *adulterium*.] In criminal law. Criminal conversation between a married person and one of the opposite sex, whether married or single, being in the former case sometimes called *double*, and in the latter, *single* adultery.* In England, it was anciently punished as a crime, but is now left to the coercion of the spiritual courts, the temporal courts taking no cognizance of it, otherwise than as a private injury; for which, in the case of adultery by a wife, the husband may have an action of trespass against the adulterer. 4 *Bl. Com.* 65. 3 *Id.* 139.

In the United States, it is generally punished as a public offence, by fine and imprisonment. See *Statutes of the several States, United States Digest*, Adultery.

ADVANCEMENT. [L. Lat. *advancementum*.] A payment or appropriation of money, or a settlement of real estate made by a parent to, or for a child, in *advance*, or anticipation of the distributive share to which such child would be entitled after his death, and with a view to a portion or settlement in life.* 2 *Bl. Com.* 517. *Lovell on Wills*, 140 *et seq.* 2 *N. Y. Rev. St.* [97,] 37, §§ 76—78. A giving by anticipation the whole, or a part of what it is supposed a child will be entitled to, on the death of the party making the advancement. Parker, C. J. 17 *Mass. R.* 356, 358.—A provision made by a parent for his child, of money or property, the entire interest in which passes out of the former in his lifetime, though it is not requisite, in all cases, that it should take effect in possession before the death of the parent. Ligon, J. 22 *Alabama R.* 233, 236; citing

2 *Wm.'s Exec.* 923. 2 *P. Wms.* 440, 445. *Toller, Exec.* 380. To constitute an advancement, the father must divest himself of all interest in the property the child receives. 24 *Mississippi R.* 619. See 21 *Alabama R.* 761.

An advancement is a gift. Where a father, on advancing a sum of money to a son, takes a bond for its re-payment, with or without interest, it is a debt, and not an advancement. 21 *Penn. St. R.* 283. A conveyance of property, to take effect at the death of the grantor, is an advancement. 13 *B. Mon.* 526. The maintenance or education, or giving of money to a child, without a view to a portion or settlement in life, is not an advancement. 2 *N. Y. Rev. St.* [98,] 37, § 78. *Lovell on Wills*, 140, 220. 4 *Kent's Com.* 418. *United States Digest*, Advancement.

ADVANTAGIUM. L. Lat. In old pleading. An advantage. *Co. Entr.* 484. *Towns. Pl.* 50.

ADVENA. Lat. [from *advenire*, to come to.] In the civil law. One who comes from abroad, (*aliunde adveniens*.) Defined in the Digests by the Gr. *ἐκτοικος*, (one who is away from home, *απο δίκου*.) *Dig.* 50. 16. 239. 4. One who makes a temporary stay in a place; a stranger or sojourner. *Calv. Lex. Advena mercator.* *Dig.* 5. 1. 19. 2.

ADVENIR. L. Fr. [from Lat. *advenire*, to come to, to happen.] To come to; to become. *Kelham. Advaigne*; happens, becomes. *Id.*

ADVENT. [Lat. *adventus*.] A period of time recognised by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day. *Cowell. Termes de la Ley. Wharton.*

ADVENTITIUS, Adventicius. Lat. [from *advenire*, to come to, to happen.] In the civil law. Coming from without, from another person, or thing; from another than the usual source: adventitious; foreign. *Dos adventitia*; a dowry or portion given by another person than a parent. *Dig.* 23. 3. 5, 11. *Cod.* 5. 13. 1. *Nov.* 91, c. 2. *Bract. fol.* 92.

Accidental; incidental; accessory. *Dig.* 40. 9. 6.

ADVENTURA. L. Lat. An adventure. 2 *Mon. Angl.* 615. *Towns. Pl.* 50. Flotson, jetson and lagon are styled *adventuræ maris*, (adventures of the sea.) *Hale de Jur. Mar.* pars 1, c. 7.

ADVENTURE. Fr. and Eng. [from Lat. *advenire*, to happen.] A chance, or accident. *En aventure si*; in case. *Kelham*. See *Misadventure*.

In mercantile law. A risk, or hazard; an enterprise, [L. Lat. *periclitatio*, *adventura*;] a thing sent to sea, at the risk of the person sending it.* *Whishaw*. *Lex Mercatoria*. A thing sent to sea, under the care of a supercargo, at the risk, and for the benefit of the party sending it.

Something which a seaman is permitted to carry abroad with a view to sell for profit. *Webster*.

ADVERSA. Lat. [see *Adversus*.] In the civil law. Adverse; opposite; unfavorable; afflictive. *Adversa fortuna*. *Dig.* 45. 1. 83. 5. *Adversa valetudo*; adverse health; ill health. *Adversa valetudo excusat*; ill health is an excuse. *Dig.* 27. 1. 10. 8. See *Fleta*, lib. 6, c. 7, § 7.

ADVERSE POSSESSION. In the law of titles. The possession of lands for a certain length of time *adversely*, or in opposition to the title of another; the possession of a person claiming under a title, or under color of a title *adverse* to, or inconsistent with that of another claimant who is out of possession.* To make a possession adverse, so as to constitute a bar to the assertion of a legal title by the owner of it, or by one against whom the adverse occupant brings ejectment, it must be an actual, continued, visible, notorious, distinct and hostile possession. *Duncan*, J. 6 *Serg. & Rawle*, 21. 2 *Smith's Lead. Cas.* (Am. ed.) 416, note. A possession, to be adverse, must be inconsistent with the title of the claimant who is out of possession; it must be accompanied with a claim of title, exclusive of the rights of all others, and must be definite, notorious and continued for the period of twenty years. 24 *Wendell's R.* 587. See 1 *Burr.* 60. 2 *Smith's Lead. Cas.* 396. 2 *Jac. & Walk.* 1, 139, 140. 8 *Cranch's R.* 462. 7 *Wheaton's R.* 59. 5 *Peters' R.* 402. 19 *Penn. St. R.* 262. 5 *Maryland R.* 256. 15 *Illinois R.* 271. *Clerke's N. Y. Digest*, Adverse possession.

Adversary is used for *adverse*, by *Marshall*, C. J. 8 *Cranch*, 462, and *Story*, J. 7 *Wheaton*, 59.

ADVERSUS. Lat. In the civil law. Against, (*contra*). *Adversus bonos mores*; against good morals. *Dig.* 47. 10. 15. See titles of the Code; *Cod.* 2. 27-38. Adverse; opposite; afflictive. *Calv. Lex*.

ADVICE. In mercantile usage. Information; direction or instruction given by a correspondent. *Chitty on Bills*, 162, 166. Information given by one merchant or banker to another, by letter, in regard to bills or drafts drawn by the former on the latter; with particulars of date or sight, the sum, to whom made payable, &c. *McCulloch's Dict.*

ADVISAMENTUM, Avisamentum. L. Lat. [from *advizare*, q. v.] In old practice. Advisement; advice. *Towns. Pl.* 51. *Prynne Rec.* 85, 230.

ADVISARE. L. Lat. [L. Fr. *aviser*.] In old practice. To advise; literally, to see to; to look to, or look into, to deliberate or consider. *Curia advisare vult*; the court will advise, i. e. examine, deliberate, or consult together, before giving their opinion, or judgment. "Here is an *advizare vult*, indefinitely." *Holt*, C. J. 12 *Mod.* 269. A more correct form is *advisari*, (q. v.)

ADVISARI. L. Lat. [L. Fr. *etre avise*.] In old practice. To be advised; to be prepared for decision, by examination and deliberation. *Curia advisari vult*; the court will be advised, that is, will take time to examine and consider, before giving judgment. *Et quia dictus Justic'—se advisari vult*; and because the said justice will be advised. *Keilw.* 57 b. *Et quia curia hic de judicio super premissis in hac parte reddend' nondum advisatur, &c., dies inde datum est, &c.*; and because the court here is not yet advised of [as to] the judgment to be given upon the premises in this behalf, &c., a day is thereupon given, &c. *Id.* 195. "The court took an *advisari*." 2 *Jones' (N. C.) Eq. R.* 51.

ADVISE. [L. Lat. *advizare*, q. v.] To consider, examine, deliberate, consult; as a court does, after the argument, and before the decision of a cause.

To give advice, or counsel.

In mercantile usage. To give information, or notice of facts. See *Advice*.

Advised; prepared to give judgment, after examination and deliberation. "The court took time to be advised." 1 *Leon.* 187. See *Advisari*.

ADVISEMENT. [L. Lat. *advisamentum*; L. Fr. *avisement*.] The deliberation, or consultation of a court, after the argument of a cause by counsel, and before delivering their opinion.* Consideration. *Dyer*, 31 b.

ADVOCARE. L. Lat. [from *ad*, to,

and *vocare*, to call.] In old English law. To call to, or upon; to call in aid; to call upon one to warrant another's title; to vouch. *Spelman*, voc. *Advocatus*. See *Vocare*, *Vouch*.

To avow, (advow;) to acknowledge, or openly admit, adopt, justify and maintain a thing; (*rem factam agnoscere, rem in se suscipere*.) *Spelman*, ub. sup. *Advocare filium*; to acknowledge a child. *Bract.* fol. 63 b. *Dominus cum [factum] advocaverit, suam facit injuriam*; when the lord avows (adopts) the act, he makes the wrong his own. *Id.* fol. 171 b, 204 b.

To advocate, defend, or protect. *Spelman*, voc. *Advocatus*. *Si non dominum habuerit qui advocet eum*; if he have no lord who will defend him. *Bract.* fol. 152 a.

To assert the right of advocacy, or patronage, (*jus patronatus*;) to exercise the right of presentation to a vacant benefice; to call a clerk to such benefice; to present him.* *Spelman*, ub. sup. *Glanv.* lib. 4, c. 1. *Skene de Verb. Signif.* voc. *Advocatio*. *Cowell*.

To claim. *Animalia vagantia quæ nulus—advocat*; wandering animals, which no one claims. *Bract.* fol. 120 a. To avow, in replevin. *Reg. Orig.* 83 a.

ADVOCASSIE. L. Fr. The office of an advocate; advocacy. *Kelham*.

ADVOCATA. L. Lat. [from *advocare*, q. v.] In old English law. A patroness; a woman who had the right of presenting to a church. *Liber Ramesiens.* sect. 140, cited in *Spelman*, voc. *Advocatus*.

ADVOCATE. [Lat. *advocatus*, from *advocare*, to call to, or upon, to defend.] One who is called upon to assist or defend another; a defender, patron, or protector; one called to give legal advice or assistance, particularly to plead (in the popular sense) another's cause in court. A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court.* *Holt-house*. An *advocate*, in the civil and ecclesiastical courts, is the same as a *counsellor*, or counsel in the courts of common law. 3 *Bl. Com.* 25, 26. The term is more commonly used in the Scotch than in the English law. *Bell's Dict.* See *Barrister*, *Counsel*, *Counsellor*.

ADVOCATI FISCAL. Lat. [Gr. *φισκοσυν-γρογοι*.] In the civil law. Advocates of the fisc, or revenue; fiscal advocates, (*qui*

causam fisci egissent.) *Cod.* 2. 9. 1. *Id.* 2. 7. 13. Answering, in some measure, to the king's counsel in English law. 3 *Bl. Com.* 27. *Bl. Law Tr.* 53. See *Advocatus fisci*.

ADVOCATIA. L. Lat. [from *advocare*, q. v.] In old European law. The management of any public business entrusted to one by his superior. *Hotom. de Verb. Feud.* *Feud. Lib.* 2, tit. 27, § 15, [16].

The defence or patronage of a religious house. *Hot. ub. sup.*

In old English law. The right of advowson or presentation. *Spelman*, voc. *Advocatus*.

ADVOCATIO. Lat. [from *advocare*, to call upon.] In the civil law. Advocacy; the office or business of an *advocatus* or advocate. *Dig.* 6. 1. 54. *Id.* 5. 2. 32. *Id.* 38. 2. 14. 9. *Cod.* 2. 7. 6. *Id.* 2. 8. 5.

ADVOCATIO. L. Lat. [from *advocare*, q. v.] In old English law. An advowson; the right of presentation or calling to a vacant church or benefice (*jus patronatus*, *jus presentandi*, *jus advocacionis*; anciently called *jus advocaticium*.) *Spelman*, voc. *Advocatus*. *Reg. Orig.* 30 a. *Glanv.* lib. 4, c. 1. *Bract.* fol. 53 a. A taking into protection or patronage, (*in clientelam receptio*.) 2 *Bl. Com.* 21. *Co. Litt.* 17 b. 119 b. See *Advowson*.

An avowry in replevin. *Reg. Orig.* 83 a. See *Avowry*.

ADVOCATION. In Scotch law. An appeal; process of appeal; the process of procuring a review of the judgment of an inferior court. *Bell's Dict.* 2 *Alison's Crim. Pract.* 26.

ADVOCATOR. L. Lat. [from *advocare*, q. v.] In old practice. One who called on, or vouched another to warrant a title; a voucher. *Advocatus*; the person called on, or vouched; a vouchee. *Spelman*. *Towns. Pl.* 45.

In Scotch practice. An appellant. 1 *Brown's R.* 67.

ADVOCATUS. Lat. [from *advocare*, to call upon.] In the civil law. An advocate; one who managed, or assisted in managing another's cause before a judicial tribunal. Called also *patronus*. *Cod.* 2. 7. 14. But distinguished from *causidicus*. *Id.* 2. 6. 6. *Advocatos accipere debemus omnes omnino qui causis agendis quoquo studio operantur*. *Dig.* 50. 13. 1. 11. See *Cod.* 2. 7. 14. *Id.* 2. 8. 1. The office of

advocatus was a different one from that of *consiliarius*, or assessor, who was the judge's adviser. *Cod.* 1. 51. 14.

ADVOCATUS. Lat. [from *advocare*, q. v.] In old English law. An advocate or pleader. *Bract.* fol. 372 b. In *narratione* *advocati*; in the pleader's count. *Fleta*, lib. 6, c. 50, § 1. See *Advocate*.

A patron, or defender; a person having the right to present to a church (*jus advocationis*;) an advowee, (q. v.) *Glanv.* lib. 5, c. 14. *Bract.* fol. 240 b. *Fleta*, lib. 5, c. 14, § 2. *Reg. Orig.* 30.

One who has called or vouched to warranty; a vouchee. *Spelman*, voc. *Advocatus*. See *Vouchee*.

ADVOCATUS FISC. Lat. In the civil law. Advocate of the fisc, or treasury. *Dig.* 28. 4. 3, *Id.* 49. 14. 7. *Cod.* 2. 9.

ADVOUE, Advoc. L. Fr. An advocate; a person skilled in the law. *Kelham*.

ADVOW. See *Advocate, Avow.*

ADVOWEE. [L. Lat. *advocatus*, L. Fr. *advoue, avoue*.] In English ecclesiastical law. A patron; one who has a right to present to a benefice. *Stat.* 25 Edw. III. st. 5. *Cowell*.

ADVOWRY. See *Avowry*.

ADVOWSON, Advowzen, Avowson, Avoweson. L. Fr. and Eng. [perhaps a contraction of *advocation*; L. Lat. *advocatio*, q. v.] In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. 2 *Bl. Com.* 21. *Co. Litt.* 119 b, 120 a. The person enjoying this right is called the patron (*patronus*) of the church, and was formerly termed *advocatus*, the advocate or defender, or in English, *advowee*. *Id. ibid.* 1 *Crabb's Real Prop.* 129, § 117. The right itself is termed an *advowson*, (*advocatio*;) because the patron is bound to advocate or protect (*advocare*) the rights of the church, and of the incumbent whom he has presented. *Spelman*, voc. *Advocatus*. See *Advocatus, Patron, Incumbent, Presentation*. Finch writes the word, *avowson*. *Law*, b. 1, c. 4.

ADVOWSON APPENDANT. An advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding

any other words. 2 *Bl. Com.* 22. *Co. Litt.* 120, 121. 1 *Crabb's Real Prop.* 130, § 118.

ADVOWSON IN GROSS. An advowson separated from the manor, and annexed to the person. 2 *Bl. Com.* 22. *Co. Litt.* 120. 1 *Crabb's Real Prop.* 130, § 118. 3 *Steph. Com.* 116.

ADVOWSON PRESENTATIVE. The usual kind of advowson, where the patron has the right of *presentation* to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 *Bl. Com.* 22. 1 *Crabb's Real Prop.* 131, § 119.

ADVOWSON COLLATIVE is where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary,) he does by one act, which is termed *collation* or conferring the benefice, all that is usually done by the separate acts of presentation and institution. 2 *Bl. Com.* 22, 23. 1 *Crabb's Real Prop.* 131, § 119. See *Collation*.

ADVOWSON DONATIVE is where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bishop, or institution by him.* 2 *Bl. Com.* 23. 1 *Crabb's Real Prop.* 131, § 119.

ADVOWTRY, Avowtry. Adultery, so called in old statutes. *Advowterer*, an adulterer; *advowtress*, an adulteress. *Cowell*, voc. *Adultery*. *Termes de la Ley*, voc. *Advowterer*.

ADYRE. L. Fr. To say. *Kelham*.

ÆE. L. Fr. Age; the age of a man. *Kelham*.

ÆDES. Lat. In the civil law. A house; a dwelling; a place of habitation whether in the city or country. *Dig.* 30. 41. 5. In practice, however, houses in the city were termed *ædes*, in the country, *villæ*. *Id.* 50. 16. 211. An *ædes* consisted of *solum* (the soil, or ground on which it stood, otherwise called *area*;) and *superficies*, or every thing on or above the ground. *Id.* 41. 3. 23. pr.

ÆDIFICARE. Lat. [from *ædes*, a house, and *facere*, to build.] In civil and old English law. To make, or build a house; to erect a building. *Dig.* 45. 1. 75. 7. Sometimes applied to other subjects, as a ship, (*navis*.) *Dig.* 49. 14. 46. 2.

Ædificare in tuo proprio solo non licet quod alteri noceat. It is not lawful to build

on your own land what may injure another. 3 *Inst.* 201. A person has no right to erect a building on his own land which interferes with the due enjoyment of adjoining premises, and occasions damage thereto, either by overhanging them, or by the flow of water from the roof and eaves upon them; unless a legal right so to build has been conceded by grant, or may be presumed by user, or by the operation of a statute. *Broom's Max.* 172, [278.]

Ædificatum solo solo cedit. What is built upon land belongs to or goes with the land. *Broom's Max.* 172, [289.] *Co. Litt.* 4 a. See *Cedere, Solum, Cujus est solum*, &c.

ÆDIFICATOR. Lat. [from *ædificare*, q. v.] In the civil law. A builder. *Cod.* 10. 64. 1.

ÆDIFICIUM. Lat. [see *ædificare*.] In the civil law. A building, (edifice.) *Ea quæ ex ædificio detracta sunt, ut reponantur, ædificii sunt, at quæ parata sunt ut imponantur, non sunt ædificii*; those things which are taken away from a building in order to be [with a view to their being] returned to their place, are a part of the building; but things which are made ready for putting into the building, are not a part of it. *Dig.* 19. 1. 17. 10. See *Cod.* 8. 10. **Ædificia solo cedunt.** Buildings belong to [go with] the soil. *Fleta*, lib. 3, c. 2, § 12.

ÆDILE. [Lat. *ædilis*, from *ædes*, a house or building.] In the Roman law. A magistrate who had the supervision of buildings, (*qui ædibus præessent*, *Dig.* 1. 2. 2. 21;) streets, markets, sewers, &c.

ÆDILITIUM EDICTUM. Lat. In the Roman law. The *Ædilitian Edict*; an edict providing remedies for frauds in sales, the execution of which belonged to the curule ædiles. *Dig.* 21. 1. See *Cod.* 4. 58.

ÆDITUS, Editus. Lat. In old English law. Born. *Bract.* fol. 70 a, 278 a.

Passed, as a statute; put forth, or promulgated. See *Editus*.

ÆGROTO. Lat. [abl. of *ægrotus*, sick.] Being sick or indisposed. A term used in some of the older reports. "Holt ægrotó." 11 *Mod.* 179.

ÆEL, Ail. L. Fr. A grandfather. *Britt.* c. 89, fol. 221. See *Aieul, Ayle, Aele*; a grandmother. *Britt. ub. sup.*

ÆQUITAS, Equitas. Lat. [from *æquus*, equal, even; Gr. *ἰσότης*.] In the

civil law. Equity, as opposed to *strictum* or *summu jus*, (q. v.) Otherwise called *æquum*, *æquum bonum*, *æquum et bonum*, *æquum et justum*. *Calv. Lex.* *Æquitas* is not enumerated among the several species of law, either in the Digests or Institutes; but the term frequently occurs in the Roman law. *Tayl. Civ. Law*, 90. *Brissonius. Cod.* 1. 14. Grotius defines it *virtus voluntatis, correctrix ejus in quo lex propter universalitatem deficit*; a virtue of the will, the corrector of that wherein the law, by reason of its universality, is deficient. *De Æquitate*, § 3. See 1 *Bl. Com.* 61.

In old English law. Equity. *Bract.* fol. 3 a. *Dicitur æquitas quasi equalitas*; it is called equity, being as it were equality. *Id. ibid.* See *Equity*.

Æquitas est rerum convenientia, quæ in paribus causis, paria desiderat jura, et omnia bene coequiparat; equity is the fitting together, or adjustment of things, which, under equal [the same] circumstances, requires equal [the same] rules, and properly equalizes all things. *Id. ibid.* This definition is quoted by Lord Coke, though with considerable verbal alteration. *Co. Litt.* 24 b.

Æquitas est correctio legis generaliter lata, quâ parte deficit; equity is the correction of a law passed in general terms, in the part where it is defective.* *Plowd.* 375. *Branch's Princ.* *Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem*; equity is a certain correction applied to a law where something is wanting to it, on account of its general comprehensiveness making no exception. *Id.* *Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in verâ ratione consistens*; equity is a certain perfect reason, which interprets and amends the written law; comprehended in no writing, but consisting in right reason alone. *Co. Litt.* 24 b. *Æquitas est verborum legis sufficiens [efficacius] directio, quâ una res solummodo cavetur verbis, ut omnis alia in æquali genere, iisdem caveatur verbis*; equity is the proper application of the words of the law, where one thing only is provided for in terms, in order that every other thing of the same kind may be provided for by those same words. *Branch's Princ.* Plowd.* 467.

Æquitas sequitur legem. Equity follows law. *Gibb.* 136. Courts of equity must follow, not lead the law in all cases to which the rules of common law apply; they cannot, for instance, establish a different rule of property from that which the law has established; but where the law is ineffectual, equity steps in to give redress, following, however, the rules of law. 2 *Bl. Com.* 330. *Dougl.* 21. Lord Kenyon, C. J. 4 *T. R.* 650. *Broom's Max.* 38. "There is not a better rule than that of *æquitas sequitur legem*." Lord Northington, C. 2 *Eden*, 316. Lord Hardwicke, C. *Ambl.* 200. 15 *Howard's R.* 299.

ÆQUIVOCUM, Equivocum. Lat. In old English law. Of various significations, (*multiplex*.) *Hob.* 125. *Verbum* or *nomen æquivocum*; a word having several senses. *Litt.* sect. 234. *Co. Litt.* 154 b. 7 *Man. & Gr.* 504. Lord Coke distinguishes between *æquivocum æquivocans*, a word of divers several significations, and *æquivocum æquivocatum*, one reduced to a certain signification, (*univocum*.) *Co. Litt.* *ub. sup.*

Of doubtful signification, (*ambiguum*.) *Hob.* 125.

Depending for its meaning upon its connection with other words, (*relativum*.) *Id.*

ÆQUUS, Æquum. Lat. In old English law. Equal; even; equitable; just. *Æquum et bonum est lex legum.* What is equitable and good is the law of laws. *Hob.* 224.

Æquior est dispositio legis quam hominis. The disposition of the law is more equitable than that of man. 8 *Co.* 152.

Bracton makes a distinction between *æquus* and *justus*. *Bract.* fol. 3 a.

ÆRARIUM. Lat. [from *æs*, money.] In the Roman law. The treasury, (*fiscus*.) *Calv. Lex.*

ÆREA. L. Lat. [from Sax. *eghe*, Anglo-Norm. *eye*, an egg.] In old English law. An eyry; a nest. *Aereas uccipitrum, espervariorum, falconum, aquilarum et de heyrintis*; eyries of hawks, sparrow-hawks, falcons, eagles, and of herons. *Cart. de Forest.* c. 13. See *Fleta*, lib. 2, c. 41, § 7.

ÆRIN. L. F. Brass. *Kelham.*

ÆRNOVEL. L. Fr. August; the month of August. *Kelham.*

ÆS. Lat. In the Roman law. Money, (literally, brass;) metallic money in

general, including gold. *Dig.* 9. 2. 2. pr. *Id.* 9. 2. 27. 5. *Id.* 50. 16. 159.

ÆS ALIENUM. Lat. [another's money.] In the Roman law. Debt; a debt; that which we owe to others, (*quod nos aliis debemus*.) *Dig.* 50. 16. 213. 1. *Ob æs alienum servire liberos creditoribus jura compelli non patiuntur*; the laws do not suffer freemen to be compelled to serve their creditors on account of debt. *Cod.* 4. 10. 12. See *Id.* 4. 2. 11. *Id.* 4. 29. 1.

ÆS SUUM. Lat. [one's own money.] In the Roman law. Debt; a debt; that which others owe to us, (*quod alii nobis debent*.) *Dig.* 50. 16. 213. 1.

ÆSNECIA, Æsnetia. L. Lat. [L. Fr. *aisneesse*, from *aisne*, eldest, or first born.] In old English law. Esnecy; the right or privilege of the eldest born. *Spelman. Glanv.* lib. 7, c. 3. *Fleta*, lib. 2, c. 66, §§ 5, 6.

The privilege allowed the eldest daughter of drawing first, in the partition of lands by lot, (*prima pars cernendæ hæreditatis, protocia*;) called also *pars enecia, enitia*, or *eneia*, (Fr. *l'aine part*.) *Spelman. Bract.* fol. 75. See *Esnecy, Pars enitia*.

ÆSTIMARE. Lat. In the civil law. To estimate; to value; to value in money; to put a price upon; to appraise. *Calv. Lex.*

ÆSTIMATIO. Lat. [from *æstimare*, to value; L. Fr. *æstime*.] In civil and old English law. Valuation; rating; consideration. *Corpus humanum, [liberum corpus,] non recipit æstimationem.* The human body, [the body of a freeman,] does not admit of valuation. *Hob.* 59.

Æstimatio præteriti delicti ex postremo facto nunquam crescit. The estimation [rating of the degree, or nature] of a past offence never increases from [is never influenced in the way of aggravation by] a subsequent fact or act. *Bacon's Max.* 38, reg. 8. *Broom's Max.* 17, [34.] The law, in judging of the character of a past offence, never allows a subsequent act or matter to be taken into account, so as to aggravate it.* The law construesth neither penal laws nor penal facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as, if any circumstance or matter be subsequent, which, laid together with the beginning, should seem to draw it to a higher nature, yet the law doth not extend or amplify the offence. Therefore, if a

man be wounded, and the percussor [striker] is voluntarily let go by the jailor, and after death ensueth of the hurt, yet this is no felonious escape in the jailor. *Bacon's Max. ub. sup.*

Lord Bacon illustrates this maxim by several cases from the old books, but makes no reference to the civil law from whence it is derived: (*Nunquam crescit ex postfacto præteriti delicti æstimatio*;) the difference consisting only in the arrangement of the words. *Dig.* 50. 17. 139. 1.

The principle of this maxim forbids the passage of *ex post facto* laws. See *Ex post facto*.

ÆSTIMATIO CAPITIS. L. Lat. [Sax. *were*.] In Saxon law. The estimation or valuation of the head; the price or value of a man, (*pretium hominis*.) By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis*. *Crabb's Hist. Eng. Law*, ch. 4. *Blount*.

ÆTAS. Lat. [Gr. *ἡλικία*.] In the Roman law. Age; life; the life of a person; of which there were various divisions or stages. See *Tayl. Civ. Law*, 254—260. *Calv. Lex. Brissonius*.

In old English law. Age; full age. *Infra ætatem*, (q. v.); under age. *Remanebit assisa usque ad ætatem omnium*; the assise shall stay until they are all of age. *Bract.* fol. 276 a. See *Parol demurrer*.

ÆTAS INFANTILÆ PROXIMA. Lat. In the civil law. The age next to infancy; the first half of the period of childhood, (*pueritia*.) extending from seven years to ten and a half. *Inst.* 3. 20. 9. 4 *Bl. Com.* 22.

ÆTAS LEGITIMA. Lat. In the civil law. Lawful age; the age of twenty-five. *Dig.* 3. 5. 27. pr. *Id.* 26. 2. 32. 2. *Id.* 27. 7. 1. pr.

ÆTAS PERFECTA. Lat. In the civil law. Complete age; full age; the age of twenty-five. *Dig.* 4. 4. 32. *Id.* 22. 3. 25. 1.

ÆTAS PRIMA. Lat. In the civil law. The first age; infancy, (*infantia*.) *Cod.* 6. 61. 8. 3.

ÆTAS PUBERTATI PROXIMA. Lat. In the civil law. The age next to puberty; the last half of the period of childhood, (*pueritia*.) extending from ten years and a half to fourteen. *Inst.* 3. 20. 9. 4 *Bl. Com.* 25.

ÆTATE PROBANDA. See *De ætate probanda*.

ÆTHIOPS. Lat. In old English law. An Ethiopian; a negro. *De uno Æthiopo, vocat' a negro*; for one Ethiopian, called a negro. 2 *Salk.* 686.

ÆUE, Aue, Age. L. Fr. Water. See *Ewe. Aeuēs, auēs*; waters. *Kelham*.

Αἰμα, Αἰμα. Gr. [from *αἰς* from, and *ἡλικία*, age.] In the civil law. A minor; one not of full age. *Dig.* 27. 1. 10. 7. *Αἰμαλικός*; minors. *Id.* 26. 6, 2. pr.

AFFAIRE, (A faire,) Affoire. L. Fr. To do, to make; to be had, made, done, or taken. *Kelham. L. Fr. Dict.*

AFFECTARE. Lat. In old English law. To desire. *Quicunque—firmam affectaverit securitatem obtinere*; whoever shall desire to obtain good security. *Fleta*, lib. 2, c. 64, § 2.

AFFECTIO. Lat. In old English law. Disposition; intention. *Affectio tua nomen imponit operi tuo*. Your disposition (or intention) gives name (or character) to your work or act. *Bract.* fol. 2 b, 101 b. See *Actus, Affectus*.

AFFECTUS. Lat. In civil and old English law. Disposition; intention. *Quum injuria ex affectu facientis consistat*; since wrong consists in the intention of the party doing it. *Dig.* 47. 10. 3. 1. *Ex affectu contrahentium*; from, or by the intent of the contracting parties. *Bract.* fol. 52 b. *Nec furtum committitur, nisi ex affectu furandi*; nor is theft committed, unless from the disposition of stealing. *Id.* fol. 101 b. *Est in seysina per affectum et per aspectum*; he is in possession by intention, and by view. *Id.* fol. 225. *Affectus possidendi*; the intention of possessing. *Fleta*, lib. 4, c. 20, § 7. *Oculis et affectu*; by the eyes and the intention. *Dig.* 41. 2. 1. 21. *Propter affectum*, (q. v.); on account of disposition, favorable inclination or bias. *Affectus tuus nomen imponit operi tuo*. *Heath, J. 5 Taunt.* 140. See *Affectio tua*, &c.

AFFEER, Affere. [L. Lat. *afferare*, from Fr. *afferer*, *affeurer*, or *afforer*, to tax, assess, or set a value upon a thing.] In old practice. To assess or tax; to fix, liquidate, or reduce to a precise sum; to moderate, mitigate or regulate.* A term applied to the regulation of amercements, which were always inflicted in general terms, and signifying to reduce the general amercement to a certainty, or tax, moderate or mitigate it according to the particular circumstances of the offence and the offender. *Cowell. Blount. Spelman*, voc.

Afferatores. 4 *Bl. Com.* 379, 380. *Hob.* 129 a. *F. N. B.* 75 I. K. *Id.* 76 A. D. 8 Co. 77, [39, 40.] 1 *Salk.* 56. 3 *Id.* 33. The officers by whom this was done were called *afferors*, and the assessment an *afferment*, or *afferance*, (qq. v.) 4 *Bl. Com.* 379, 380. 1 *Show.* 62. See *Amercement*.

AFFEEREMENT, *Afferement*, *Affearment*. In English law. The assessment, liquidation, moderation or mitigation of an *amercement*. 4 *Bl. Com.* 379. 1 *Crabb's Real Prop.* 505, § 653.

AFFEERORS. [L. Lat. *afferatores*; L. Fr. *affirours*.] In English law. Persons chosen at courts leet and baron, and sworn to *affer*, that is, assess and moderate *amercements* imposed on offenders. 4 *Bl. Com.* 380. 1 *Crabb's Real Prop.* 505, 506, §§ 653—655. In the superior courts of England, the coroners *affeer*d the *amercements*. *F. N. B.* 76.

AFFERARE, *Afforare*, *Affurare*. L. Lat. In old English practice. To *affere*, or *affeer*. *Et finis ejusdem J. E.* *afferatur per cur' occasione predict' ad 2000l.*; and the fine of the said J. E. is *affeer*ed by the court, on the occasion aforesaid, at 2000 pounds. 3 *How. Stat. Trials*, 329.

AFFERATORES. L. Lat. [from *afferrare*, to *affeere*.] In old English law. *Afferors*. *Spelman*. See *Afferors*.

AFFERATUS, *Aforatus*. L. Lat. [from *afferrare*, to *affeere*.] *Affeered*, or *assessed*. *Cowell*, voc. *Aforatus*.

AFFERAUNT, *Aferont*. L. Fr. Proportion. *Kelham*.

AFFERE. See *Affaire*.

AFFERER, *Afeurer*, *Afforer*. L. Fr. To *affeer*; to tax, assess, regulate or proportion. *Spelman*, voc. *Afferatores*. *Kelham*. *Il fuit amercy et affere a iv d. Yearb.* 10 Edw. III. 11.

AFFERMER. L. Fr. To let to farm. *Kelham*.

To make sure; to establish or confirm. See *Affirmer*.

AFFIANCE. Fr. and Eng. [L. Lat. *affidatio*, from *affidare*, to plight or pledge.] The plighting of troth or faith between a man and a woman, upon an agreement of marriage to be had between them. *Litt.* sect. 39. *Co. Litt.* 34 a. See *Affidare*.

AFFIANT. In practice. A person making an affidavit. *Todd*, J. 9 *Wheaton's R.* 483. 25 *Alabama R.* 221. *Depoent*, (q. v.) is the more common word. See *Affidavit*.

AFFIDARE. L. Lat. [from *fides*, faith;

fidem dare, to give or pledge faith.] In canon law. To plight one's faith, as on an engagement to marry; to betroth. *Postquam eam affidaverat, et cum qua postea publice contraxit*; after he had betrothed her, and with whom he afterwards publicly contracted [marriage.] *Bract.* fol. 29 a. *Co. Litt.* 34 a.

In feudal law. To give or swear fidelity, or fealty, as a tenant or vassal to his lord. *Spelman*. See *Affidatio*, *Affidatus*.

In old practice. To pledge by oath; to swear to do a thing; simply to swear, or make oath; to *make faith*, as the Scotch phrase literally renders it. *Quorum quilibet affidabit quod de quolibet hundredo eliget, &c.*; each of whom shall swear that out of every hundred he will choose, &c. *Bract.* fol. 116 a. *Jurare*, (q. v.) occurs in this passage in the same sense. *Jurare vel affidare*. *Fleta*, lib. 6, c. 10, § 15. *Et ad hoc fideliter faciendum affidabunt amerciatores quod, &c.*; and to do this faithfully, the *amercers* shall swear, &c. *Bract.* fol. 116 b. See *Id.* 337 b. 351 b. *Affidavit*; he swore, or pledged himself by oath. *Id.* 352 a. *Et si queratur de bateria, tunc affidat quod querimonia ejus sit vera*; and if he complain of battery, then he must make oath that his complaint is true. *Fleta*, lib. 2, c. 1, § 25. See *Affidavit*.

AFFIDATIO. L. Lat. [from *affidare*, q. v.] In canon and feudal law. A plighting or pledging of faith; an affiancing. *Spelman*, voc. *Affidare*. *Mutua affidatio*; the mutual plighting of faith between husband and wife. *Skene de Verb. Signif. Reg. Maj.* lib. 1, c. unde, 49.

A giving, or swearing of faith, fealty or fidelity. *Spelman*, voc. *Affidare*. *Bract.* fol. 88 a. *Affidatio dominorum*; an oath taken by the lords in parliament. *Blount*. *Mutua affidatio*; the mutual bond of fidelity between lord and vassal. *Skene de Verb. Sign.*

AFFIDATUS. L. Lat. [from *affidare*, q. v.] In feudal and old European law. One who has given or sworn fealty or fidelity; a tenant by fealty. *Spelman*, (voc. *Affidare*,) distinguishes the *affidati* from vassals properly so called. *Hotoman* calls them *quasi vassals*. *Hot. de Verb. Feud.* *Affidata*; a woman affianced, or betrothed. *Cowell*.

AFFIDAVIT. L. Lat. [from *affidare*, q. v.] In practice. An oath in writing, sworn before some judge or officer of a court, or other person legally authorized to

administer it; a sworn statement in writing; a statement, in writing, of one or more matters of fact, signed by the party making it, and sworn to before some authorized officer.* To make affidavit of a thing is to testify to it upon oath, in writing. See 3 *Bl. Com.* 304.

The party making an affidavit is usually described as "the deponent," (sometimes, "the affiant," (q. v.) and in making his statements is said to depose—"being duly sworn, deposes and says,")—but an affidavit is distinguished from a deposition, properly so called, by the circumstance that it is always made *ex parte*, and without any cross-examination. See *Deposition, Depose, Deponent*. The term affidavit is also applied, (though not with strict propriety,) to statements made on affirmation. Affidavits are most commonly used for certifying or proving the service of process, or other matters relating to the proceedings in a cause, or in support of, or opposition to motions, in cases where a court determines matters in a summary way. 3 *Bl. Com.* 304. 3 *Steph. Com.* 679. 1 *Tidd's Pract.* 491. *United States Digest, Affidavit*.

In the late Texas cases of *Shelton v. Berry*, (19 *Texas R.* 154,) and *Crist v. Parks*, (*Id.* 234,) it was held that the signature of the party sworn is not an essential part of an affidavit, where there is no statute or rule of court requiring it; and the first edition of this Dictionary was cited by the court, among other authorities, to show that signature does not enter into the original meaning and definition of the word. There are two early decisions in the Supreme Court of New-York to the same point. See *Haff v. Spicer*, 3 *Caines' R.* 190. *Jackson v. Virgil*, 3 *Johnson's R.* 540. 1 *Burr. Pract.* 342, (2d ed.) It is matter of daily practice, however, to regard an affidavit as imperfect, unless it be signed by the deponent or affiant. In all the best collections of practical forms, a signature constitutes a part of the affidavit; and there are definitions in the books which expressly incorporate the same idea. See *Bac. Abr. Affidavit*.

* * The term affidavit, now in daily use, is the perfect tense of the old law Latin verb *affido, affidare*; and literally signifies "[he] has made oath," or "made faith;" "[he] has sworn." The original meaning of *affidare*, as applied to law proceedings, was to pledge by oath, to swear to do some-

thing, and is constantly used by Bracton in this sense. See *Affidare*. Thus, in the old law of essoins, the essoiner was required to swear that he would have his principal in court at a certain day, (*affidabit essoniator quod habebit dominum suum ad certum (aliud) diem*). *Bract. fol.* 337 b, 351 b. And if neither principal nor essoiner appeared at the day, the latter was allowed to excuse both by a new essoin that he could not come, nor have his principal, as he swore to do, (*sicut affidavit*), on account of misfortune, &c. *Id. fol.* 352 a. *Non autem omnes essoniatores affidabunt, sed illi tantum qui sunt baronibus inferiores; comites vero, barones et baronissæ non affidabunt, sed plegios invenient*; but all essoiners shall not swear, but only those who are inferior to barons; earls, barons and baronesses shall not swear, but shall find pledges. *Fleta*, lib. 6, c. 10, § 15. The word *affidaverunt* (they pledged themselves by oath) is used in an old concord made upon a writ of right, 33 Hen. II. cited by Lord Coke. 3 *Co. pref.* So, in a charter given at length by Blount, dated April 18, A. D. 1180, the words occur, "*juravi et affidavit*," I have sworn and pledged my oath (to keep the covenants contained in the instrument). *Blount, voc. Covenant*. By a gradual extension of meaning, the word *affidare* came to signify to swear generally, to swear to a thing already done, or to an existing fact, as well as to swear to do a thing in future. *Reg. Orig.* 29 b, regula. *Fleta*, lib. 2, c. 1, § 25. Hence the use of *affidavit*, in the third person of the past tense, as the emphatic word of the Latin forms in which oaths were recorded; from which the written oath of the present day has derived its name.

AFFIERT, *Afert*, *Afert*. L. Fr. It belongs, or behooves. *Ceo que a luy afferit*; that which belongs to him. *Litt. sect.* 44, 289, 294. *Afferont*; they belong. L. Fr. *Dict.* See *Afert*.

AFFILARE. L. Lat. To file or affile. *Afiletur*; let it be filed. 8 *Co.* 319, [160.] *De recordo affilatam*; affiled of record. 2 *Ld. Raym.* 1476.

AFFILE. [L. Lat. *affilare*.] In old practice. To put on file. "To affile of record." 2 *M. & S.* 202. Now shortened to *file*, (q. v.)

AFFILIATION. [from Lat. *ad*, to, and *filius*, a child.] The assignment of a child to a parent, by legal authority; the adjudging of a man to be the father of a bastard

child. *Brande.* More commonly termed *filiation*, (q. v.)

AFFINER. L. Fr. To put an end to. *Kelham.*

AFFINES, Adfines. Lat. [pl. of *affinis*, (q. v.); L. Fr. *affins*.] In the civil law. Relations or connexions by marriage. *Inst.* 1. 10. 6. 2 *Steph. Com.* 285. See *Adfines*. Related by marriage. *Qui neutri parti sunt affines*; who are related to neither party by marriage. *Fleta*, lib. 4, c. 5, § 4.

Neighbors, who own or occupy adjoining lands. *Dig.* 10. 1. 12.

AFFINIS. Lat. [from *ad*, at or near, and *finis*, a border; L. Fr. *affin*.] In the civil law. Bordering, or adjacent; near; related by marriage. See *Affines, Adfines*. There is no single English word corresponding to this. *Affined*, however, is sometimes used in translation. 1 *Kaufm. Mackeld. Civ. Law*, 141, § 134, note. *Id.* 142, § 135.

Affinis mei affinis non est mihi affinis. One who is related by marriage to a person related to me by marriage, has no affinity to me. *Shelford Marr. & Div.* 174.

AFFINITAS. Lat. [from *affinis*, q. v.] In the civil law. Affinity; relation by marriage. *Inst.* 1. 10. 6. See *Affinity, Adfines*.

AFFINITY. [Lat. *affinitas*, q. v.] Alliance, nearness or relation by marriage. *Co. Litt.* 157 a. 1 *Bl. Com.* 434. The relationship which marriage occasions between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. *Tomlins. Holthouse.* The connection which arises by marriage, between each person of the married pair, and the kindred of the other. 1 *Mackeld. Civ. Law*, 141, § 134. A husband is related by affinity to all the *consanguinei* of his wife, and, *vice versa*, the wife to the husband's *consanguinei*; for the husband and wife being considered one flesh, those who are related to the one by blood are related to the other by affinity. *Gibbs. Cod.* 412. 1 *Chitt. Bl. Com.* 435, note. *Jewett, J.* 1 *Denio*, 186, 187.

In a larger sense, consanguinity or kindred. *Co. Litt.* 157 a.

AFFINS. L. Fr. Kindred by marriage. *Kelham.*

AFFIRM. [Lat. *affirmare*, to make firm; L. Fr. *affirmer*.] In practice. To ratify, or confirm a former law or judgment. *Cowell. Blount.* Used in this sense by

West, and Crompton. *West's Symbol.* part 2, tit. Fines, sect. 152. *Crompt. Jurisd.* fol. 166. Now particularly applied to the confirmation, by a court of appeal, of the judgment of an inferior court; the opposite of *reverse*, (q. v.)

To ratify or confirm a former act. See *Affirmance*.

To assert, or declare solemnly, instead of making oath. See *Affirmation*.

To aver, or state a thing in pleading; the opposite of *deny*, or *traverse*, (qq. v.) *Steph. Pl.* 84.

AFFIRMANCE. In practice. The confirming, or ratifying a former law, or judgment. *Cowell. Blount.* Used in this sense, in the statute 8 Hen. VI. c. 12. *Id.* The confirmation of the judgment of a court by a superior court on appeal, or writ of error. See *Affirm*.

The confirmation, acknowledgment, or adoption of a former act; as the affirmation by a person of full age, of an act done during minority. 2 *Kent's Com.* 234—238.

AFFIRMANT. A person who affirms, in place of making oath. See *Affirmation*. Used in affidavits and depositions which are *affirmed*, instead of sworn to, in place of the word *deponent*.

AFFIRMARE. Lat. and L. Lat. In old English law. To make firm; to confirm, or ratify. See *Affirm*.

To aver, or state a thing, in pleading. *Affirmanti, non neganti, incumbit probatio.* The proof lies upon him who affirms, not upon him who denies.* *Steph. Pl.* 84.

To farm out, (*ad firmam dare*; L. Fr. *affermer*.) *Affirmatus*; farmed out; let for a firm, farm or rent. *Cowell*, voc. *Firmaratio*. See *Firma, Farm*.

In Scotch practice. To open or "fence" a court. *Skene de Verb. Sign.* voc. *Iter*, n. 2. See *Curia legitime affirmata*.

AFFIRMATION. In practice. A solemn declaration made before a court, judge or other authorized officer, and having the force of an oath; an indulgence allowed by law to persons professing to have conscientious scruples against taking an oath, who, in cases where an oath is required from others, may make a solemn *affirmation* or declaration that what they say is true.* *Tomlins. Jacob.*

AFFIRMATIVE STATUTE. In legislation. A statute in affirmative language; a statute directing some act to be done, or declaring what shall be done; as a *nega-*

tive statute is one which prohibits a thing from being done, or declares what shall not be done. Blackstone describes affirmative acts of parliament as those "wherein justice is directed to be done according to the law of the land." 1 *Bl. Com.* 142.

AFFIRROUR. L. Fr. An affeelor. See *Affeoror*.

AFFIXUS, Adfixus. Lat. [from *ad*, to, and *fixus*, fixed.] In the civil law. Affixed; fixed or fastened to. *Ædium autem multa esse, quæ ædibus affixa non sunt, ignorari non oportet, utputa seras, claves, claustra*; but it ought to be known that many things belong to houses, which are not actually affixed to them; such as locks, keys, bars. *Dig.* 19. 1. 17. pr. *Castella plumbea, putea, opercula puteorum, epitonia fistulis adplumbata, aut quæ terra continentur, quamvis non sunt affixa, ædium esse constat*; it is clear that leaden reservoirs, wells, covers of wells, wheels for raising water, soldered to pipes, or which are under ground, though they are not affixed, belong to houses. *Id.* 19. 1. 17. 8. *Papinianus quoque, libro septimo Responsorum ait, sigilla et statuæ affixæ instrumento domus non continentur, sed domus portio sunt; quæ vero non sunt affixa, instrumento non continentur.* Papinian, also, in his seventh book of Responses, says that images and statues affixed, are not included in the furniture of a house, but are a part of the house, but that those which are not affixed, are not included in furniture. *Id.* 33. 7. 12. 23. See *Instrumentum. Statuæ affixæ basibus structilibus, aut tabulæ religatæ catenis, aut erga parietem adfixæ, aut si similiter cohærent lychni, non sunt ædium; ornatus enim ædium causâ parantur, non quo ædes perficiantur*; statues fastened upon pedestals of masonry, or pictures fastened with chains or fixed to the wall, or lamps suspended in a similar way, are no part of the house; for they are put up for the sake of ornament, and not for the completion of the building. *Dig.* 50. 16. 245. See *Fixtures*.

AFFORCE, Aforce. [L. Fr. *afforcer*; L. Lat. *afforciare*.] In old English law. To apply, or exercise force; to use compulsory measures; to add to, or increase. *Afforcing an assise* was the production of a verdict, in case of a difference of opinion among the jurors, by adding others till twelve were found who were unanimous.* *Bract.* fol. 185 b. 292. *Fleta*, lib. 4, c. 9, § 2. 2 *Reeves' Hist. Eng. Law*, 267. *Barringt. Obs. Stat.* 20, 21.

AFFORCER, Aforcer. L. Fr. To strengthen; to add to, or increase; to compel, or enforce. *Kelham*.

AFFORCIAMENTUM, Aforciamentum. L. Lat. [from *afforciare*, to make strong.] In old English law. A fortress or stronghold, or other fortification. *Cowell*.

The calling of a court upon a solemn, or extraordinary occasion. *Id.* See *Aforciamentum*. Increase. *Pro afforciamiento districtionis*; for the afforcement of the distress. *Fleta*, lib. 2, c. 65, § 9.

AFFORCIARE, Afortiare. L. Lat. To make strong; to use or apply strength or force; to add to, or increase. *Assisam afforciare*; to afforce an assise. *Fleta*, lib. 4, c. 9, § 2. *Affortietur assisa*; the assise shall be afforced. *Bract.* fol. 185 b. See *Afforce*.

AFFORER. L. Fr. To estimate, assess, or tax. *Kelham*. See *Afferer*.

AFFOREST. [L. Lat. *afforestare*.] To turn into a forest, (*in forestam convertere*.) *Spelman*, voc. *Afforestare*.

AFFORESTARE, Aforestare. L. Lat. In old English law. To afforest; to convert into forest. *Omnes forestæ quas Henricus rex, avus noster, afforestavit, videantur per bonos et legales homines, et si boscum aliquem alium quam suum dominicum afforestaverit, ad dampnum illius cujus boscus ille fuerit, deafforestetur.* All the forests which King Henry, our grandfather, afforested, shall be viewed by good and lawful men; and if he shall have afforested any wood, other than his own demesne, to the damage of him whose wood it was, it shall be disafforested. *Cart. de Forest.* 9 Hen. III. c. 1. And see *Mag. Cart. Johan.* c. 53. *Spelman*, voc. *Afforestare. Omnes forestæ quæ aforestatæ sunt tempore nostro*; all forests which have been afforested during our reign. *Mag. Cart. Johan.* c. 47.

AFFRANCHIR. L. Fr. To set free. *Kelham*.

AFFRAY. [L. Lat. *affraia*, from Fr. *affraier, effrayer*, to affright.] In criminal law. The fighting of two or more persons in some public place, to the terror of others; and there must be a stroke given, or offered, or weapon drawn, otherwise it is not an affray. 3 *Inst.* 158. 4 *Bl. Com.* 145. The fighting must be in public, for if it be in private, it is no affray, but an assault. *Id. ibid.* *Hawk. P. C.* b. 1, c. 63, sect. 1. 4 *Steph. Com.* 276.

AFFRECTAMENTUM, Affretamentum.

L. Lat. [from Fr. *fret*, freight.] In old English law. An affreightment, or freightment. *Rast. Entr.* 24. *Pat.* 11 *Hen.* IV. cited in *Cowell*.

AFFRECTATUS. L. Lat. Freightied. *Rast. Entr.* 409. *Towns. Pl.* 50.

AFFREIGHTMENT. [Fr. *affretement*, *nolisement*; L. Lat. *affractamentum*, q. v.] In maritime law. The freighting or affreighting of a ship; that is, the hiring and letting to hire of a vessel for the conveyance of goods on a certain voyage, at a stipulated price or freight.* A charter party is called a contract of affreightment. 3 *Ken's Com.* 201. *Smith's Merc. Law*, 172. See *Charter party*, *Freight*.

In French law, freighting and affreighting are distinguished. The owner of a ship freights it, (*le frette*;) he is called the freighter, (*fretteur*;) he is the letter or lessor, (*locateur*, *locator*.) The merchant affreights (*affrete*) the ship, and is called the affrighter, (*affreteur*;) he is the hirer, (*locataire*, *conductor*.) *Emerigon, Tr. des Ass.* ch. 11, sect. 3.

AFFRETEMENT. Fr. In French law. The hiring of a vessel; affreightment. Called also *nolisement*. *Ord. Mar.* liv. 1, tit. 2, art. 2. *Id.* liv. 3, tit. 1, art. 1.

AFFRETER. Fr. In French law. To hire a vessel at a stipulated price; to affreight. *Emerig. des Ass.* ch. 11, sect. 3.

AFFRETEUR. Fr. In French law. The hirer of a vessel; the affrighter. *Emerig. des Ass.* ch. 11, sect. 3.

AFFRI, *Afri*, *Afra*. L. Lat. [probably the same with L. Lat. *averia*, Fr. *avers*, *affers*.] In old English law. Plough cattle, bullocks or plough horses. *Afri*, or *afri caruca*; beasts of the plough. *Reg. Orig.* 150 a. *Stat. Westm.* 2, c. 18. *Fleta*, lib. 2, c. 62, § 8. *Id.* c. 76, §§ 8, 9. *Spelman*. See *Averia*.

DrUGHT cattle. *Afri carectæ*; beasts of the cart. *Fleta*, lib. 2, c. 85. *Id.* c. 73, § 6.

AFFURARE. L. Lat. In old English law. To affeer. *Amerciatus fuit ibidem et affuratus ad xii. d.* *Yearb.* H. 4 Edw. III. 28.

AFIERT. L. Fr. Belongs; goes to. *LL. Gul. Cong.* c. 3. *Afierent*; belong. *Id.*

AFORCIAMENTUM. L. Lat. In old English law. An afforcement; a strengthening, adding to; increase. *Aforciamentum plegiorum*; afforcement of pledges. If a defendant did not appear after the first

attachment, then upon the plaintiff offering himself, he was to be attached by better pledges, to answer on another day. This was called *aforciammentum plegiorum*. *Bract.* fol. 439 b. 1 *Reeves' Hist. Eng. Law*, 482. *Aforciammentum districtionis*; afforcement of a distress. *Bract.* fol. 330. *Aforciamentum curiæ.* *Id.* fol. 35.

AFORESAID. [L. Lat. *prædictus*, *præfatus*, *prærecitatus*.] Before, or already said, mentioned, or recited; premised. *Plowd.* 67. *Foresaid* is used in Scotch law. See *Prædictus*, *Præfatus*.

"AFORESAID," [L. Lat. *prædictus*] refers to the last antecedent. 1 *Chitt. Crim. Law*, 173. But this is not an invariable rule. *Id.* 1 *Ld. Raym.* 405. 2 *Id.* 1094.

AFORESTARE. L. Lat. In old English law. To afforest. *Mag. Cart. Joh.* c. 47. See *Afforestare*.

AFORETHOUGHT. [Lat. *præcogitata*.] In criminal law. Premeditated. See *Malice aforethought*.

"AFTER," in a will, does not always, or necessarily refer to time, but to order in point of right and enjoyment. *Shaw*, C. J. 11 *Pick. R.* 378. 2 *Cushing's R.* 387.

AFTERMATH, *Aftermoath*. The grass which grows after the hay has been made; the second mowing or crop of hay. 2 *Wooddes. Lect.* 61. "Tithes of aftermoath shall be paid, but not tithes of after-pasture." *Bunb.* 10, case 12. "The after or latter math" of a meadow. 13 *East*, 155.

The right to the last crop, or pasturage. 1 *Chitt. Gen. Pr.* 181.

AGAIT, *Agayte*. L. Fr. Waiting; await; wait. *Gist en agait*; he lies in wait. *L. Fr. Dict.* *Kelham*.

AGARD. L. Fr. [from *agarder*, q. v.; L. Lat. *awarda*.] An award. *Nul fait agard*; no award made. See *Award*.

AGARDER. L. Fr. In old practice. To award, adjudge, determine. *Si come la court agardre*; as the court shall award. *Stat. Westm.* 1, c. 44. *Le breve fuit agard bon*; the writ was held good, *Reg. Orig.* 97 b, nota. The formal word of giving judgment. *Agardomus*; we award. *Yearb.* H. 6 Edw. III. 4.

To condemn or sentence. *Il fuit agard al' Flete*; he was adjudged to the Fleet. *Yearb.* T. 10 Edw. III. 28.

AGE, *Ave*, *Aive*. L. Fr. Water. *Kelham*.

AGE. [L. Fr. *agé*, *aage*; L. Lat. *ætas*.] A period of life at which persons become legally competent to do certain acts, or enter into certain contracts, which before they were incompetent to do, or enter into.* The term is emphatically applied in the common law, to the period of twenty-one years in males and females, (called *full age*; Lat. *plena ætas*, Fr. *pleine agé*;) on arriving at which they are said to be of *age*, and previously to be *under age*, (Lat. *infra ætatem*; Fr. *deins agé*;) that is, infants or minors. *Stat. Westm.* 1, c. 22. *Litt.* sect. 103, 104. *Co. Litt.* 78 b. 1 *Bl. Com.* 463. 2 *Kent's Com.* 233. See *Ætas*, *Full age*.

Besides full age, there are other periods at which males and females become of age for different purposes, such as the *age of consent* to marriage, which is fourteen years in males and twelve in females; the *age of discretion*, which is fourteen in both sexes, at which they may choose their guardians; *age to make a will* of personal estate, which at common law was fourteen in males and twelve in females; *age to be an executor* or executrix, which was seventeen years. 1 *Bl. Com.* 463. *Co. Litt.* 78 b, 79 a. *Hargr. Co. Litt.* note 83, lib. 2. 2 *Steph. Com.* 332. 2 *Kent's Com.* 78, 222, 242. There is also, in English law, the age at which males may take the oath of allegiance, which is twelve years; the age at which females may be given in marriage, which is seven; and the age at which they become entitled to dower, which is nine years. 1 *Bl. Com.* 463. See 2 *Steph. Com.* 332. As to the age of responsibility for criminal acts, see 4 *Bl. Com.* 22, 23. 2 *Steph. Com.* 331. *Macpherson on Infants*, 450.

AGE PRAYER. [L. Fr. *age prier*; L. Lat. *ætatis precatio*.] In old English practice. A prayer for age; or for the allowance of a privilege or indulgence, on account of age.* At common law, in many real actions by or against an infant, and in actions of debt against him, as heir to any deceased ancestor, either party might suggest the non-age of the defendant, and *pray* that the proceedings might be deferred until his full age, or (in legal phrase) that the infant might *have his age*, and that the *parol* might *demur*, that is, that the pleadings might be stayed. 3 *Bl. Com.* 300. *Termes de la Ley*. *Finch, Law*, 360. This was called the plea of *parol demurrer*, which has been recently

abolished. *Stat.* 11 Geo. IV. and 1 Will. IV. c. 37, s. 10. See *Parol*, *Parol demurrer*.

AGENCY. [Lat. *procuratio*.] The relation or office of an agent;* the relation between principal and agent. *Story on Agency*, § 3. The administration or management of the business of another person in his behalf, and by his appointment or authority. See *Procurator*.

Agency is founded upon a contract, either express or implied, by which one of the parties confides to the other the management of some business to be transacted in his name, or on his account, and by which the other assumes to do the business, and to render an account of it. 2 *Kent's Com.* 613. See *Agent*.

AGENFRIDA. L. Lat. [Sax. *agen-frige*.] In Saxon law. The true master or owner of a thing; the actual possessor. *LL. Inq.* c. 50. *Spelman*.

AGENHINE, Awenhine, Awnhine. Sax. [from *agen*, own, and *hine*, a servant.] In Saxon law. A domestic or inmate; one belonging to the family or household. *Frum night uncuth, twanight gest, thrid night* agenhine; first night a stranger, second night a guest, third night an inmate. *LL. Edw. Conf.* c. 17. Sometimes written *hogenhine*, *hoghenhyme*, and *homehyme*, (qq. v.)

AGENS. Lat. [from *agere*, q. v.] One who acts or does an act; an actor or doer. Hence the English *agent*. *Agentes et consentientes pari poena plectuntur*; those who do an act, and those who consent to it, shall suffer the same punishment. 5 *Co.* 80.

In civil and old English law. A plaintiff; one who brings an action. *Inst.* 4. 6. 33. *Fleta*, lib. 4, c. 17, § 8. *Agenti ex contractu non potest opponi questio domini*; one who sues on a contract cannot be met with a question of ownership. A rule of insurance law. *Santerna*, part 4, n. 48. *Rote de Gènes*, dec. 5, n. 11. *Roccus*, Not. 46. It was, however, to be taken with the qualification—*nisi hoc fuisset in fraudem assecuratoris*. *Id.* *Emerigon*, *Tr. des Ass.* ch. 5, § 2.

AGENT. [from Lat. *agens*, acting, one who acts, from *agere*, to act or do: Lat. *procurator*, *vicarius*.] One who acts for another; one who is employed by another to do any act for his benefit, or on his account.* *Story on Agency*, § 3. A person who acts in the name and place of

mother, (who is called his principal,) by his authority or appointment, as his substitute, deputy, proxy, attorney, factor, &c. Agent is a *nomen generalissimum*, and includes factors and brokers, who are only a special class of agents. 2 *Kent's Com.* 622, note. See *Paley on Agency*. *United States Digest*, Principal and Agent.

AGENT AND PATIENT. In old law. Agent and subject; doer and receiver.* Where the same person was the doer of a thing, and the party to whom it was done, he was termed *agent and patient*; as where an executor retained out of the goods of the deceased in his hands, the amount of a debt due to himself, he being both the party to whom the debt was due and the party paying it.* *Termes de la Ley*.

AGER. Lat. In the civil law. A field; a piece of land or place in the country, with no building upon it, (*locus qui sine villa est*, *Dig.* 50. 16. 27;) corresponding with *area*, in a city. *Locus sine ædificio in urbe area, rure autem ager appellatur.* *Id.* 50. 16. 211. If it had a building, it was called *fundus*, (*ager cum ædificio fundus dicitur.*) *Id.* *ibid.* See *Fundus*, *Prædium*.

Land generally. *Bract.* fol. 9. *Sic enim debere quem meliorem agrum suum facere, ne vicini deteriores faciat*; every one ought so to improve his own land as not to injure his neighbor's. 3 *Kent's Com.* 441.

AGER. L. Lat. In old English law, An acre. *Lib. Rames.* sect. 245. *Matt. Paris*, in ann. 1083. *Spelman.* See *Acra*, *Acre*.

AGERE. Lat. In the civil law. To act; to do. *Dig.* 50. 16. 19. Distinguished from *facere* and *gerere*. *Calv. Lex.*

To act at law, or by, or through the law; (*agere lege*;) to deal with one at law; to bring an action; to sue. *Agere potest*; he can sue. *Inst.* 2. 20. 6. *Agere non potest*; he cannot sue. *Id.* *ibid.* *Id.* 4. 10. pr. *Si agat quis*; if a man bring an action. *Id.* 4. 6. 2. *Agitur*; a suit is brought, or may be brought. *Id.* 4. 6. 22, 25. *Agere injuriarum*; to sue for damages. *Id.* 4. 4. 2. *Ad hoc agere*; to bring an action for this object. *Bract.* fol. 18 a. *Si agat de conventionibus*; if he bring an action of covenant. *Id.* fol. 24 b. It was also applied to the defence of an action. *Dig.* 44. 1. 1.

AGGER. Lat. In the civil law. A dam, bank or mound. *Cod.* 9. 38. *Towns. Pl.* 48.

AGGRAVATION. [Lat. *aggravatio*, from *aggravare*, from *ad*, to, and *gravis*, heavy.] In criminal law and pleading. A making worse; a making more enormous or injurious; tending to increase the amount of damages claimed. *Steph. Pl.* 243.

AGGREGATE. [Lat. *aggregatus*, from *ad*, to, and *grex*, a company or multitude.] Composed of several; consisting of many persons united together. 1 *Bl. Com.* 469. See *Corporation*.

AGILD. Sax. [from *a*, without, and *gild*, a payment.] In Saxon law. Free from penalty, (*sine multa vel compensatione*;) not subject to the payment of *gild*, or *weregild*, that is, the customary fine or pecuniary compensation for an offence. *Spelman.* *Cowell.* See *Gild*, *Weregild*.

AGILLARIUS. L. Lat. In old English law. A hay-ward; a herd-ward, or keeper of the herd of cattle in a common field. *Cowell.*

AGISER. L. Fr. To lie. *Agisant*; lying. *L. Fr. Dict.*

AGIST. [L. Lat. *agistare*; from *ad*, to, and Norm. *gister*, or *giser*, to lie or lay.] To put, place, or lay to, or near, (*adjicere*, *apponere*, *rem juxta aliam collocare*;) to adjust, (Fr. *adjouster*,) or apportion. To assign, apportion or fix the number of cattle entitled to feed on certain ground; to adjust, apportion or assess a tax. This appears to have been the original sense of the word. *Spelman*, voc. *Agistare*.

In ancient law. To take in and feed the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use. *Charta de Foresta*, c. 9. *Spelman*, *ub. sup.* *Fleta*, lib. 2, c. 41, §§ 15, 16, 31. *Cowell.*

In modern law. To take in cattle to feed, or pasture, at a certain rate or compensation. Lord Ellenborough, C. J. 13 *East*, 159. *Jacob*, voc. *Agistment*. See *Agistare*, *Agistatio*.

AGISTAMENTUM. L. Lat. [from *agistare*, q. v.] In old English law. An agistment, apportionment, or feeding of cattle, especially in the king's forests. *Fleta*, lib. 2, c. 41, § 15. *Spelman*, voc. *Agistare*. *Termes de la Ley*.

A duty or tax for repairing banks, dykes or sea walls, levied upon the owners of lands benefited by them. *Spelman.* *Cowell*, voc. *Agistator*.

AGISTARE. L. Lat. [from *ad*, to, and Norm. *gister*, to lie, lay or place.] In old

English law. To adjust, assign, apportion, assess; to assign or apportion cattle, or other animals, to a feeding ground. *Unusquisque liber homo agistet boscum suum in foresta pro voluntate sua*; every freeman shall agist his wood in the forest at his pleasure. *Chart. de Forest.* c. 9. *Spelman.* To adjust or assess a tax, or duty. *Id.*

To use for the purposes of feeding cattle. *Inquiratur de agistatoribus regis, si fideliter agistaverint dominicos boscos regis*; inquiry shall be made concerning the king's agisters, if they have faithfully agisted the king's demesne woods. *Fleta*, lib. 2, c. 41, § 31.

To feed or pasture cattle; to feed other animals; to agist. *Ducere possit porcos suos per dominicum boscum nostrum liberè, —ad agistandum eos in boscis suis propriis, vel alibi*; he may take his swine through our demesne wood freely,—to agist them in his own woods, or elsewhere. *Chart. de Forest.* c. 9. See *Agist*.

AGISTATIO. L. Lat. [from *agistare*, q. v.] In old English law. The laying or assessing a proportion of duty upon lands, for repairing sea banks and walls. *Cowell.*

AGISTATOR. L. Lat. [from *agistare*, q. v.] In old English law. An agister; an officer of the forest who took account of cattle there agisted. *Chart. de Forest.* c. 8. See *Fleta*, lib. 2, c. 41, § 31. Sometimes called *gyst-taker* or *guest-taker*. *Cowell.* *Crompt. Jur.* fol. 146. 4 *Inst.* 293. See *Agister*.

A collector and expender of taxes for keeping sea-walls in repair. *Kennett's Gloss.*

AGISTER, *Agistor*. [L. Lat. *agistator*.] One who agists or takes in cattle and horses to pasture at a certain rate. *Story on Bailment*, § 443. See *Agist*, *Agistment*.

AGISTMENT. [L. Lat. *agistamentum*.] The taking in of horses, or other cattle, to graze and depasture in one's grounds at a certain rate. 2 *Bl. Com.* 452. See *Agist*. Called anciently *gisement*. *Cowell.*

AGIUM. L. Lat. [from *agere*, q. v.] A termination in the composition of Latin words, answering to the termination *age*, in English, signifying service or duty; as *homagium*, (*servitium hominis*,) the service of a man; *escuagium*, (*servitium scuti*,) the service of the shield; *socagium*, (*servitium socæ*,) the service of the plough, and the like. *Co. Litt.* 86 a. *Spelman*, voc. *Ap-penagium*.

AGNASCI, *Adgnasci*. Lat. [from *ad*, to,

and *nascor*, *nasci*, to be born.] In the civil law. To be born to one; to have issue after making a will. *Constat agnascendo rumpi testamentum*; it is clear that a will is revoked by the birth of a child. *Cic. de Orat.* i. 57. *Dig.* 28. 3. 3.

AGNATES, *Agnats*. [Lat. *agnati*.] In the law of descents. Relations by the father. These words are used in the Scotch law, and by some writers, as English words, corresponding with the Latin *agnati*, (q. v.) *Ersk. Inst.* b. 1, tit. 7, § 4. 3 *Gibbon's Rom. Emp.* 175, 177, (Am. ed.) *Agnates* include the following relations: father, son, brother, daughter, sister, father's brother, brother's son, &c. 1 *Kaufm. Mackeld. Civ. Law*, 137, note.

AGNATI, *Adgnati*. Lat. In the civil law. Relations by the father; relations through males; translated in Scotch law, and sometimes by English writers, *agnates* or *agnats*, (q. v.) 2 *Bl. Com.* 235. *Agnati* were a species of *cognati* (blood relations in general,) although the term *cognati* was also used in the sense of a species. *Sunt agnati cognati per virilis sexus cognationem conjuncti, quasi a patre cognati; agnati* are relations connected by a relationship of the male sex, as it were related by the father. *Inst.* 1. 15. 1. *Id.* 3. 2. 1. *Inter agnatos et cognatos hoc interest, quod in agnatis et cognati continentur, in cognatis non utique et agnati; verbi gratia, patris frater, id est, patruus, et agnatus est et cognatus; matris autem frater, id est, avunculus, cognatus est, agnatus non est.* Between *agnati* and *cognati* there is this difference, that, under the name of *agnati*, *cognati* are included, but not *è converso*; for instance, a father's brother, that is, a paternal uncle, is both *agnatus* and *cognatus*, but a mother's brother, that is, a maternal uncle, is a *cognatus* but not *agnatus*. *Dig.* 38. 7. 5. pr. See *Feud. Lib.* 2, tit. 11, 15, 26. See *Cognati*.

AGNATIC. [from *agnati*, q. v.] Derived from, or through males. 2 *Bl. Com.* 236.

AGNATIO. Lat. [from *agnati*, q. v.] In the civil law. Relationship on the father's side; agnation. *Agnatio a patre est.* *Inst.* 3. 5. 4. *Id.* 3. 6. 6.

Birth, especially after a will; an additional birth. See *Agnascor*. [*Testamentum*] *agnatione posthumi sive posthumæ rumpitur*; a will is annulled by the birth of a posthumous son or daughter. *Inst.* 2. 13. 1.

AGNISER. L. Fr. To acknowledge. *Agnise, agnize*; acknowledge. L. Fr. Dict.

AGNOMEN. Lat. In the Roman law. An additional name, (*quasi ad nomen*.) The last of the four names used among the Romans; (the other three being the *prænomen*, the *nomen*, and the *cognomen*, qq. v.); a name assumed or added from some particular circumstance, or to denote the branch of the family to which the individual belonged. *Adam's Rom. Ant.* 35, 36. *Butler's Hor. Jur.* 28. According to Dr. Taylor, *agnomina* were originally nothing more than nick-names, or marks of scurrillity and reproach. *Tayl. Civ. Law*, 70. The word is used by some writers on old English law. *Fleta*, lib. 4, c. 10, § 9. The old Scotch, "to-name," seems to be a literal translation of it.

ΑΓΡΑΦΕΩΣ, Ἀγραφῆς. Gr. [from *α*, priv. and *γράφειν*, to write.] In the civil law. Not written; unwritten; without writing. *Dig.* 1. 1. 6. 1.

AGRARIAN. [from *ager*, land.] Relating to land, or to a division or distribution of land; as an agrarian law. See *Lex agraria*.

AGRARIUM. L. Lat. [from *ager*, land.] In old European law. A tax upon land, a tribute payable out of land, (*tributum quod ex agris penditur*.) Corresponding with the Fr. *agrier*, *champart* or *terrage*. *Marculf.* lib. 2. *Spelman*.

AGREEMENTUM, Agreementum. L. Lat. In old English law. Agreement; an agreement. *Spelman*.

This Latin form of the word *agreement* has led to the fanciful etymology adopted by Plowden, Cowell, and other writers, which makes it to be compounded of *aggregatio* and *mentium*, and so to signify a joining together of two or more minds in any thing done or to be done. *Cowell*, voc. *Agreement*. *Plowd.* 17, arg. The error of this obviously consists in confounding *mentum*, a common termination, used (as the English and French *ment*), in forming nouns from verbs, with *mentium*, the genitive plural of *mens*, mind, and is well exposed by *Spelman*. The phrase *aggregatio mentium*, however, though absurd in point of etymology, is expressive as a definition, and in that light has sometimes been adopted by high authority. *Com. Dig.* Agreement, A. 1. Hyde, J. 1 *Mod.* 126. 3 *Johns. R.* 535. See *Testamentum*.

AGREARE. L. Lat. In old English

law. To agree. *Agreavit*; [he] agreed. *Convenit, promisit, et agreavit ad et cum*, &c.; [he] covenanted, promised and agreed to, and with, &c. *Hob.* 34 b. *Acceptavit et agreavit*; accepted and agreed. *Keilw.* 195. *Corrupte agreatum fuit*; it was corruptly agreed. 2 *Str.* 871.

AGREE. [L. Lat. *agere*; from Fr. *agreer*, *aggreer*, from Lat. *aggredi*, to go or come to.] To come together, unite or concur, (*congregi*;) to be of one mind as to a thing, (*ire in eandem sententiam*;) to assent mutually, or contract to do a thing. To agree, in this its proper sense, implies action by and between two or more; and the same idea of *united* or *mutual* action is the radical one of the corresponding Latin words *convenire*, *concordare*, and *contrahere*. The word *agreed* in a written contract is regarded as the word of both parties. *Nelson, C. J.* 5 *Hill's (N. Y.) Rep.* 256, 259. See *Agreement*.

To assent to a thing, or undertake to do it; to promise. *Jewett, J.* 1 *Denio's R.* 226, 228, 229. This is a loose and incorrect sense of the term. Lord Ellenborough, *C. J.* 5 *East*, 10, 17.

To concur or acquiesce in; to approve or adopt. *Agreed, agreed to*, are frequently used in the books, (like *accord*,) to show the concurrence or harmony of cases. *Agreed per curiam* is a common expression.

To harmonize or reconcile. "You will agree your books." 8 *Co.* 67.

AGREEANCE. In Scotch law. Agreement; an agreement. "Quhilk contract and agreeance was ratified." *Skene de Verb. Signif.* voc. *Annuell*.

AGREEMENT. [L. Lat. *agreementum*, *concordia*; Lat. *conventio*, *pactum*.] A coming together of parties in opinion or determination;* the union of two or more minds in a thing done, or to be done; a mutual assent to do a thing. *Com. Dig.* Agreement, A. 1. *Plowd.* 5 a. 6 a.—The consent of two or more persons concurring, the one in parting with, and the other in receiving some property, right or benefit. *Bac. Abr.* Agreement.—A mutual contract on consideration, between two or more parties. Lord Ellenborough, *C. J.* 5 *East*, 10.—A mutual consent of the minds of the parties concerned, respecting some property or right that is the object of the stipulation, or something that is to be done or forborne; a transaction between two or more persons, in which each party comes under an obligation to the other, and each

reciprocally acquires a right to whatever is promised or stipulated by the other. 4 *Gill & Johns*. 1. See *Plowd.* 17. 12 *Howard's R.* 126. See *Agree*.

A promise, or undertaking. This is a loose and incorrect sense of the word. Lord Ellenborough, C. J. 5 *East*, 10. See 3 *Br. & Bing.* 14. 3 *Comstock's R.* 335.

A thing or matter agreed to, or upon; an instrument showing what has been agreed upon.

Agreement is constantly used as the synonyme of *contract*. 2 *Steph. Com.* 108. 109. See *Contract*. There seems, however, to be a shade of difference between the terms; *agreement* being applicable to less formal acts or instruments. See *Bac. Abr.* *Agreement*, note.

AGREER, *Aggreer*. L. Fr. In old practice. To agree; to allow, or admit. *Agree*; agreed. *Agree per le court*. *Dyer*, 5 b. (Fr. ed.) *Agree*; allowed, admitted. *Le comon erudicion convient estre agree*; the common doctrine must be admitted. *Id.* 33.

AGREER. Fr. In French marine law. To rig or equip a vessel. *Ord. Mar.* liv. 1, tit. 2, art. 1.

AGREZ. Fr. In French marine law. The rigging or tackle of a vessel. *Ord. Mar.* liv. 1, tit. 2, art. 1. *Id.* tit. 11, art. 2. *Id.* liv. 3, tit. 1, art. 11.

AGRI. Lat. Landa. Plural of *ager*, (q. v.)

AHERDANT. L. Fr. Adhering. *Aherdant al franktenement*. *Yearb. H.* 9 *Edw.* III. 4.

AHTEID. In old European law. A kind of oath among the Bavarians. *Spelman*.

In Saxon law. One bound by oath, q. d. "oath-tied." From *ath*, oath, and *tied*. *Id.*

AID, *Ayde*. [from Fr. *aide*; Lat. *auxilium*, *adjutorium*, *subsidium*.] In feudal law. A kind of pecuniary tribute paid by a vassal to his lord, on occasions of peculiar emergency, and which was one of the incidents of tenure in chivalry, or by knight's service. Aids were principally of three kinds; to ransom the lord's person, if taken prisoner; to make his eldest son a knight, (*pur faire l'eigne fitz chivaler*;) and to marry his eldest daughter, (*pur l'eigne fille marier*.) 2 *Bl. Com.* 63, 64. *Stat. Westm.* 1, c. 36. *Spelman*, voc. *Auxilium*. 2 *Reeves' Hist. Eng. Law.* 111. *Wright*, Ten. 105. 3 *Kent's Com.* 504. See *Auxilium*.

In English law. A subsidy granted to the king. *Stat.* 14 *Edw.* III. st. 2, c. 1. *Cowell*.

In old pleading. Help or assistance in defending an action. See *Aid-prayer*.

In criminal law. Assistance given to the commission of a crime. *Stat. Westm.* 1, c. 14. Aid in this sense, according to Lord Coke, comprehends all persons counselling, abetting, plotting, assenting, consenting, and encouraging to do an act, and who are not present when the act is done. 2 *Inst.* 182. See *Aider*, *Aiding*, *Auxilium*.

To AID. To help or assist. See *Aid*, *Abet*.

To remedy or cure. An error, defect or omission in pleading is sometimes *aided* by the adverse party taking no notice of it, or by verdict. 1 *Saund.* 228, note (1). See *To cure*.

AID-PRAYER. *Ayd-pryer*. [L. Fr. *aide-prier*; L. Lat. *auxilii petitio*.] In old practice and pleading. A prayer in aid, or for aid; a prayer or petition to the court, by a tenant in real actions, for the aid of another person interested in the property demanded, to help him defend the action.* Thus, a tenant for life might, at common law, *pray in aid* of him that had the inheritance in remainder or reversion; that is, that he might be joined in the action, and help to defend the title. 3 *Bl. Com.* 300. *Cowell*, voc. *Aid*. Aid-prayer was a dilatory plea, to which the demandant might counterplead, and thereupon issue would be joined as in ordinary cases. 1 *Roscoe's Real Act.* 275—281.

AIDE. L. Fr. In old English law. Aid; a feudal tribute to a lord. See *Aid*. Judicial relief. *Year Books*, *passim*.

In old French law. An excise duty payable to the crown. *Steph. Lect.* 359.

AIDER, *Aidre*. L. Fr. To aid; to help or assist. *Ci Dieu vous aide*; so help you God. *Reg. Orig.* 302 b. 303.

AIDER. In criminal law. One who aids or promotes the commission of a crime; an accessory before or at the fact; a principal in the second degree.* 1 *Russell on Crimes*, 26. Used generally in connection with the word *abettor*, and considered by some writers as synonymous with it. See *Abet*, *Abettor*.

AIDING AND ABETTING. In criminal law. A phrase applied in the common law to aiders and abettors, technically so called. 1 *Russell on Crimes*, 26. See *Abet*. Construed, in the act of Congress, 20th

April, 1818, ch. 373, to import, as in common parlance, assistance, co-operation and encouragement. 12 *Wheaton's R.* 460. The standing by, within a few feet of the assailants, when a murder is being committed, saying and doing nothing, is not sufficient, of itself, legally to satisfy a jury of such by-stander's aiding or abetting in the commission of the crime. 1 *Wisconsin R.* 159. See *Presence*.

AIE. L. Fr. Have. *Jeo aie*; I have. *L. Fr. Dict.*

AIEL, *Aieul*, *Aile*, *Ayle*. L. Fr. A grandfather. *F. N. B.* 221, in marg.

AIEL, *Ayel*, *Aile*, *Ayle*. In old practice. A writ which lay for an heir to recover the possession of lands on the seisin of his grandfather, (*aiel* or *aieul*.)^{*} Called by Roscoe, a possessory ancestral writ. 1 *Rosc. Real Act.* 127. *Ayle* is the most common form of this word, and is used by Blackstone. 3 *Bl. Com.* 186. See *Ayle*.

AIBLESSE. L. Fr. In old English law. A grandmother. *Yearb. H. 4 Edw. III.* 29.

AILOURS, *Aylours*, *Ailors*. L. Fr. Elsewhere; otherwise; besides. *Artic. sup. Chart.* c. 3. *L. Fr. Dict.*

AINESSE. Fr. [from *aine*, eldest.] In French feudal law. The right or privilege of the eldest born; esnecy. *Guyot, Inst. Feodal.* c. 17.

AINNEESCHE. L. Fr. Eldership; birthright. *Kelham*.

AINSL. L. Fr. Thus; so; even so; after the same manner; so that; unless. *Ainsi come*; even as it were. *Ainsi soit il*; so be it. *L. Fr. Dict.*

AIO. Lat. I say. In Roman practice. The initial word of the formula in which the plaintiff stated his cause of action or "declared" in the action. *Aio te mihi dare oportere*; I say that you ought to give me, &c. *Adam's Rom. Ant.* 223.

AIRE. Scotch. [Lat. *iter*.] In old Scotch law. The court of the justices itinerant, corresponding with the English *eyre*, (q. v.) *Skene de Verb. Sign. voc. Iter. Pitcairn's Crim. Trials, passim*.

Heir. "His airis and assignais." 1 *Pitc. Cr. Trials*, part 2, p. 342.

AIREAU. L. Fr. A plough. *Kelham*.

AIRER, *Aerer*. L. Fr. To plough. See *Arer*.

AIRT AND PAIRT. O. Sc. In old Scotch criminal law. Accessory; contriver and partner. 1 *Pitc. Crim. Tr.* part 1, p. 133. 3 *How. St. Trials*, 601. Now written *art and part*, (q. v.)

AISEMENT. L. Fr. Easement; an easement. *Kelham*.

AISIAMENTUM, *Aysiamentum*, *Easementum*. L. Lat. [L. Fr. *aisement*, from Fr. *aisé*, convenience.] In old English law. An easement or privilege. *Glanv. lib.* 12, c. 14. *Reg. Orig.* 185 b. *Spelman*.

AISNE, *Eigne*. L. Fr. [quasi *ainné*; first born.] In old English law. Eldest, or first born. *Aisme fitz*; eldest son. *Aisme file*; eldest daughter. *L. Fr. Dict.* *Ainenez*; eldest. *Kelham*. *Aisme* is the opposite of *puisne* (q. v.). *Spelman*, voc. *Aesneccia*.

AISNEESSE, *Aisnesse*. L. Fr. [L. Lat. *aesneccia*, q. v. Fr. *ainesse*.] In old English law. The right or privilege of the eldest, or first born; esnecy, (q. v.) *Spelman*, voc. *Aesneccia*. *Kelham* gives *ainneesche* as another form.

AIT. L. Fr. He has. *Aiet*; he shall have. *L. Fr. Dict.*

AJANT, *Ayant*. L. Fr. Having. *Ajants*, *aienz*; having. *Kelham*.

AJOURNER. Fr. In old French law. To summon. *Ou n'ajournoit point par pairs, car les pairs ne pouvoient ajourner leur seigneur; mais ils pouvoient ajourner pour leur seigneur*; he could not summon by the peers, for the peers could not summon their lord; but they might summon for their lord. *Esprit des Loix*, liv. 28, c. 28.

To adjourn, in the modern sense. *Britt.* c. 2. See *Adjourn*.

AKIN, *A-kin*. In old English law. Of kin. "Next-a-kin." 7 *Mod.* 140.

AL. L. Fr. At. *Al huis d'esglise*; at the door of the church. *Litt. sect.* 38. *Al barre*; at bar; at the bar. *Dyer*, 31, (Fr. ed.)

To. *Cestui que doit inheriter al pere doit inheriter al fitz*; he who would have been heir to the father of the deceased shall also be heir to the son. 2 *Bl. Com.* 223, 229, 250. *Al contrary*; to the contrary; of a contrary opinion. *Dyer*, 5 b.

With. *Al armes*. *Kelham*.

ALA. L. Fr. [from *aler*, q. v.] Goes; gone. *L. Fr. Dict.*

Went. *Ala son voy*; went his way. *Dyer*, 5.

ALANT. L. Fr. [from *aler*, q. v.] Going. *Litt. sect.* 240.

ALAST. L. Fr. [from *aler*, q. v.] Goes; went; gone. *L. Fr. Dict.*

ALBA. L. Lat. [from *albus*, white.] In ecclesiastical law. An alb, or aub; a

white vestment worn by priests. *Spelman. Reg. Orig.* 59 b.

ALBA FIRMA. L. Lat. [L. Fr. *blanche ferme*.] In old English law. White farm, or rent; blanch farm; money-rent. Rent payable in silver, or white money, (*argento quasi censu albo*), as distinguished from that which was anciently paid in corn or provisions, (*in annona*), called black mail, or black rent, (*census vel firma nigra*.) *Spelman. Reg. Orig.* 319 b. To hold by white farm is to hold freely in socage. 2 *Inst.* 44. See *Firma, Farm, Blanch ferme*.

ALBANAGIUM. L. Lat. [from *albanus*, q. v.; Fr. *aubaine*.] In old French law. Albanage; the state or condition of an alien or foreigner; alienage. *Benedict. in cap. Raynutius*, num. 1042. See *Albinatus jus*.

ALBA SPINA. Lat. In old English law. White thorn. *Fleta*, lib. 2, c. 82, § 2.

ALBANUS, Albinus. L. Lat. [quasi *alibinus, alibi natus*, born elsewhere or in another country; Fr. *aubaine*.] In old French law. A stranger, alien or foreigner; (Lat. *advena, extraneus*; old English, a comeling.) *De liberis hominibus albanisque*; from freemen and strangers. *Spelman. Bona albana*; the goods of a foreigner, which escheated to the prince or lord. *Id.* See *Aubaine*.

ALBATOIRES. L. Lat. [from *albus*, white.] In old English law. Whiteners; bleachers. [?] *Albatores coriorum*; whiteners of skins or leather. *Fleta*, lib. 2, c. 52, § 35.

ALBINATUS. L. Lat. [from *albanus*, or *albinus*, q. v.] In old French law. The state or condition of an alien or foreigner. See *Albinatus jus*.

ALBINATUS JUS, Albanagii jus. L. Lat. [Fr. *droit d'aubaine* or *d'aubaine*.] The right of albanage. A right and privilege which formerly existed in France, entitling the king, on the death of an alien, to all he was worth, unless he had a peculiar exemption. *Spelman*, voc. *Albanus*. 1 *Bl. Com.* 372. 2 *Kent's Com.* 69. *Rex omnia eorum bona occupat, jure albanagii: exclusa omni parentela, conjuge, et quocunque alio legitimo successore*; the king takes possession of all their goods by right of albanage, excluding all right of kindred, the wife, and every other lawful successor. *Benedict. in cap. Raynutius*, num. 1042, cited in *Spelman*, voc. *Albanus*. See *Aubaine, Droit d'aubaine*.

ALBUM. Lat. [from *albus*, white.] In the Roman law. A whitened tablet (*tabula dealbata*, Gr. λευκωμα), on which the prætor's edicts were written, and in this way made public. *Dig.* 2. 1. 9. *Tayl. Civ. Law*, 214. *Calv. Lex. Brissonius*. A public register of the prætor's edicts, actions, interdicts, &c. *Id.*

A list or register of the names of senators, (*Dio.* lv. 3.) judges, (*Suet. Tib.* 51. *Claud.* 16.) and decurions. *Dig.* 50. 3.

ALBUM, Albus. Lat. In old English law. White; blank; not written upon. *Album breve*; a blank writ; a writ with a blank or omission in it, as where it is returned with the sheriff's surname omitted to the return. *Hob.* 113 b, 130. *Yelv.* 110.

Blank; plain or smooth; without mark. *Album argentum*; plain silver, without mark or stamp; uncoined. White money. See *Alba firma*.

ALCABALA. Span. In Spanish law. A duty of a certain per cent. paid to the treasury on the sale or exchange of property. Said to be a corruption of the words *al que valu*, (that which has value.) *Schmidt's Civ. Law*, 81, note (1), quoting *Escriche*, voc. *Alcabala*.

ALCALDE. Span. In Spanish law. A magistrate or judge. 12 *Peters' R.* 442, note. 1 *White's Recopilacion*, 419.

ALCONS, Alcunz. L. Fr. Any one. *Kelham*.

ALDERMAN. [Sax. *ealdorman*, L. Lat. *aldermannus*.] A member of the corporation or common council of a city or corporate town, elected by, and representing the inhabitants of a ward, and having authority to act as a civil magistrate, and sometimes as a judge.* See *Aldermannus civitatis*. The nature of the office of alderman imports that the person holding it must be both a citizen and an inhabitant. *City of Exeter v. Glide*, 4 *Mod.* 33.

* * The use of the term *alderman* as an official title may be traced back to the time of the Anglo-Saxons. *LL. Edw. Conf.* c. 35. The word itself is derived from the Saxon *ealderman* or *ealdorman*, compounded of Sax. *ealder*, (Gr. πρεσβυτερος, Lat. *senior*), and *man*; literally, an elder man. The word *ealder* was also used as a substantive, like the modern *elder*, and was sometimes employed as synonymous with *ealderman*, but it was generally used as descriptive of age, rather than office. *Spelman. Ealderman, (aldermannus)*, on the

other hand, was employed to denote office or rank, and not age. *Vocabantur aldermanni, non propter aetatem, sed propter sapientiam et dignitatem, cum quidem adolescentessent, juris periti tamen, et super hoc experti*; they were called aldermen, not on account of their age, but on account of their wisdom and dignity; for they might be young men, provided they were skilled in the law, and possessed of the requisite experience. *LL. Edw. Conf. c. 35. Co. Litt. 168 a.* See *Ealderman*. The title, however, was not used to designate any particular office, but was applied to officers of various grades, from the highest to the lowest. It was used in the first place in a general sense, to denote any superior officer or magistrate, (*pro seniore vel superiori in quaris praefectura*;) and in this sense was applied to a prince, archbishop, bishop, duke and earl. *Spelman*. It was also used in a stricter sense, to denote certain particular officers or magistrates of both general and limited jurisdiction, such as the alderman of all England, (*aldermannus totius Angliae*;) the king's alderman, (*aldermannus regis*;) the alderman of a county, (*aldermannus comitatús*;) of a city, (*civitatis*;) of a borough, (*burgi*;) of a castle, (*castelli*;) and of a hundred or wapentake, (*hundredi sive wapentachii*.) *Id.* See *infra*.

ALDERMANNUS. L. Lat. In old English law. An alderman. *Spelman. Chart. Civit. London, 22 Nov. 50 Edw. III. Consiliarii, alias aldermanni*; counsellors, otherwise aldermen. *T. Raym. 435.*

ALDERMANNUS TOTIUS ANGLIÆ. L. Lat. Alderman of all England. An officer among the Anglo-Saxons, supposed by *Spelman* to be the same with the chief justiciary of England in later times. *Spelman, voc. Aldermannus.* See *Capitalis justitarius*.

ALDERMANNUS REGIS. L. Lat. [*Sax. cyninges ealdorman.*] The king's alderman. A high judicial officer among the Anglo-Saxons, supposed by *Spelman* not to have had a permanent authority, but to have acted under an occasional commission from the king, (*per occasionem delegatus*;) to administer justice in particular districts, like the *missus dominicus*, (q. v.) of the old continental law, or the modern justice of assise. *Spelman, voc. Aldermannus.*

ALDERMANNUS COMITATUS. L. Lat. Alderman of the county. An officer of high distinction among the Saxons,

supposed by most writers to be the same with the earl, eorle, (*comes*;) or schireman, (qq. v.) 1 *Bl. Com. 116. Co. Litt. 168 a. Gilb. C. Pleas, Introd. 1 Reeves' Hist. Eng. Law, 6, 7. 1 Spence's Chancery, 58, 59.* *Spelman* inclines to the opinion that he occupied a middle rank between the earl and viscount. He presided in the county court, or schiremote, the bishop sitting with him as an associate. *Spelman, voc. Aldermannus.* See *Comes, Earl*.

ALDERMANNUS CIVITATIS VEL BURGL. L. Lat. Alderman of a city or borough, from which the modern office of alderman has been derived. *T. Raym. 435, 437.* London appears to have had aldermen from time immemorial. *Palgrave's Rise, &c. ccl. 1 Spence's Chancery, 56, note.* According to *Spelman*, there were no distinct officers of this rank before the reign of Richard I. *Spelman, voc. Aldermannus.*

ALDERMANNUS HUNDREDI SEU WAPENTACHII. L. Lat. Alderman of a hundred or wapentake. *Spelman, voc. Aldermannus.*

ALDERMANRIA. L. Lat. In old records. Aldermanry; aldermanship; the office of an alderman. *Chart. Civit. London, 22 Nov. 50 Edw. III.*

ALDIUS. L. Lat. In old European law. A freed-man, (*statu liber, libertus cum impositione operarum factus*.) *Gloss. Vet. apud Lindenbrog. Spelman.*

Aldia. A female born of a free mother. *LL. Longob. lib. 1, tit. 30, l. 5.*

Aldiones. Sons or children of a freed-man, (*aldius*.) Words of frequent occurrence in the laws of the Lombards. *Spelman.*

ALE. L. Fr. Gone. *Clement ale*; clearly gone. *Dyer, 32, (Fr. ed.)* See *Aler*.

ALE CONNER. [L. Lat. *gustator cervisiæ*.] In English law. An ale taster; an officer anciently appointed in every court leet, and sworn to examine and assay the beer and ale, and to take care that they were good and wholesome, and sold at proper prices, according to the assise.* *Termes de la Ley. Cowell.* Ale-tasters are still annually chosen and sworn in many parts of England, in compliance with charters or ancient customs, though the duties of the office are fallen into disuse. *P. Cyclopaedia, voc. Ale. 1 Crabb's Real Prop. 501, § 647.* The ale conners in London are inspectors of measures in

public houses. *Wharton's Lex.* The same title was given to officers who examined and weighed loaves of bread, to see whether they were of due weight. 1 *Wils.* 248. See *Assize*.

ALEA. Lat. In the civil law. A game of chance or hazard. *Dig.* 11. 5. 1. See *Cod.* 3. 43.

ALEATOR. Lat. [from *alea*, q. v.] In the civil law. A gamester; one who plays at games of hazard. *Dig.* 11. 5. *Cod.* 3. 43.

ALEATORY CONTRACT. [Fr. *contrat aleatoire*; from Lat. *alea*, hazard.] In the civil law. A hazardous contract; a contract of hazard. A mutual agreement, the effects of which, with respect both to the advantages and losses, whether to all the parties or to one or more of them, depend on an uncertain event. *Civil Code of Louisiana*, art. 2951. The contract of insurance is of this description. *Pothier, Oblig.* part 1, ch. 1, sect. 1, art. 2.

ALEGER. L. Fr. To relieve, ease, redress. *Alege*; relieved, eased, redressed. *Kelham*.

ALEPIMAN. In old records. A slave, (*mancipium*.) *Spelman*.

ALER, *Aller*. L. Fr. To go. *Keilw.* 3. *T. Jon.* 139. *Alera*; he shall go. *Litt.* sect. 201. *Alant*; going. *Id.* sect. 240. *Ala*; went. *Dyer*, 5. *Ale*; gone. *Litt.* sect. 455.

ALER A DIEU. L. Fr. In old practice. To be dismissed from court; to go quit. Literally, "to go to God." *Ales a dieu sans jour*; go quit without day. *Yearb. H. 2 Edw. III.* 6. *Alez adeu*. *T.* 5 *Edw. II.* 173. *Alez a dieu tanques al quart jour*; go quit until the fourth day. *M. 4 Edw. III.* 12. *Adeu sanz jour*; quit without day. *H. 3 Edw. II.* 75.

ALER SANS JOUR. L. Fr. [L. Lat. *ire sine die*.] In old practice. To go without day; to be dismissed from court without further day assigned for appearance, or without any continuance to any certain day; to be finally dismissed or discharged. *Cowell. Litt.* sect. 201. *Co. Litt.* 134 b. See *Eat inde sine die*.

ALEU. Fr. In French feudal law. An allodial estate, as distinguished from a feudal estate or benefice; (*heritage*; *la propriété de l'héritage*.) *Guyot, Inst. Feodal.* c. 28, s. 2. See *Alleu*.

ALFET. [Sax. *alfæth*, from *alan*, to heat, and *fæt*, a vessel.] In the ordeal by boiling water, was the cauldron containing

the water, in which the accused dipped his arm up to the elbow. *Cowell. Spelman, voc. Ordalium*.

ALGO. Span. In Spanish law. Property. *White's Nov. Recop.* b. 1, tit. 5, c. 3, § 4.

ALIA ENORMIA. L. Lat. In pleading. Other wrongs. Words used in the old declarations, in actions of trespass, which, after stating the particular trespass complained of, concluded,—"*Et alia enormia ei intulit*," &c. *Towns. Pl.* 420, 421. This has been literally retained in the modern forms, ("and other wrongs to the said plaintiff then and there did," &c.), the emphatic words of the Latin being, as usual, employed to designate the clause. 1 *Chitt. Pl.* 397, 398. *Comb.* 357, 358. See *Enormia, Enormis*.

ALIANCE, *Aliaunce, Alience*. L. Fr. Confederacy; allegation; allegiance. *Kelham*. See *Alliance*.

ALIAS. Lat. In practice. Otherwise. See *Alias dictus*.

At another time; on another occasion; formerly; before. A word used in the Latin forms of English writs from a very early period, in cases where a writ of the same kind had been issued *before*, referring to such writ. *Præcipimus tibi, sicut alias tibi præcipimus*, &c. *Bract. fol.* 74 b. 441 a. *Reg. Orig.* 65, *et passim*. 1 *Reeves' Hist. Eng. Law*, 485. This clause has been literally translated in the English forms; ("We command you, as we have *before* commanded you,") and constitutes an essential part of the modern writs of *capias ad respondendum, fieri facias, capias ad satisfaciendum*, and other writs, where a writ of the same description has been previously issued without effect, and returned by the sheriff or other officer; the new or second writ being commonly termed an *alias* writ, (anciently, a *sicut alias* writ,) and the distinctive clause above given, the *alias* clause. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 128. 1 *Archb. Pr.* 292. See *Sicut alias*.

ALIAS DICTUS, or ALIAS. L. Lat. In practice. Otherwise called; otherwise. A term used in legal proceedings, to denote a second or further description of a person who has gone by two or more different names. Thus, if the same person is known by the name of John Brown as well as the name of John Smith, he is described in civil and criminal pleadings, and in legal language generally, as John Smith, other-

wise called (*alias dictus*, or *alias*.) John Brown; and such second name is called his *alias*. *Archb. Crim. Pl.* 28. *Dyer*, 50 b. *Wharton's Am. Crim. Law*, 87, 68. A similar expression is used in describing a defendant when sued on an instrument in which he is described by a name different from his ordinary or real name. *Jacob.*

ALIBI. Lat. In criminal law. Elsewhere; in another place. A term used to express that mode of defence to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time; which is termed settling up an *alibi*. *Tomlins. Foster's Crown Law*, 368. *Wills on Circumst. Evid.* 115. This term is of great antiquity in English law, and is used by Bracton in describing the proceedings on criminal appeals, in precisely its modern sense and application. *Si appellatus docere poterit—se eadem die fuisse alibi, ita quod nullo modo præsumeret contra ipsum, quod interesse posset tali facto, tali die, propter locum ita remotum, quod hoc esset impossibile, tunc cadit intentio appellantis*; if the appellee (the accused) can show that on the same day he was elsewhere, so that it can in no manner be presumed against him that he could have been present at the commission of the act on the day stated, it being impossible, on account of the distance between the places, then the complaint of the appellant (the accuser) abates, or falls to the ground. *Bract. fol.* 140 a.

ALIEN. [Lat. *alienigena*; L. Fr. *alien* nec; from *alienus*, q. v.] A stranger born; a person born in another or foreign country, as distinguished from a native or natural-born subject or citizen. In English law, one born out of the ligiance or allegiance of the king. *Litt. sect.* 198. *Co. Litt.* 129 a. 7 *Co.* 31. 1 *Bl. Com.* 366, 373. 2 *Steph. Com.* 426—429. See *Stat. 7 & 8 Vict. c.* 66. Called "a legal term." *Anst.* 468.

In American law. One born out of the jurisdiction of the United States. 2 *Kent's Com.* 50. See *United States Digest*, Alien. Alien and foreigner are synonymous terms. 1 *Peters' R.* 343. See *Foreigner*.

ALIEN AMY. L. Fr. In international law. Alien friend. An alien who is the subject or citizen of some friendly power or state.* An alien "in league;" a subject to one that is in league with the

king. *Co. Litt.* 129 b. Defined by Lord Bacon, "such a one as is born under the obeisance of such a king or state as is confederate with the king of England, or at least not in war with him." *Bacon's Arg. Case of the Postnati of Scotland, Works*, iv. 327. See *Dyer*, 2 b. *Bac. Abr.* Aliens, D.

ALIEN ENEMY. In international law. An alien who is the subject or citizen of some hostile state or power.* See *Dyer*, 2 b. *Co. Litt.* 129 b. A person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy, and, as such, is disabled from suing in the courts of the adverse belligerent.* See 1 *Kent's Com.* 74. 2 *Id.* 63. 10 *Johns. R.* 183. See the Act of Congress respecting alien enemies, July 6, 1798.

* * Lord Bacon has defined an alien enemy, in the view of the law of England, to be such a one as is born under the obeisance of such a king or state as is in hostility with the king of England. Case of the Postnati of Scotland, *Bacon's Works*, iv. 327. The mere circumstance of birth, however, is not now held to be of itself sufficient to give the character of an alien enemy. *Domicil* or residence more frequently has this effect, and alien enemies resident in the country may sue and be sued as in time of peace. The lawful residence does, *pro hac vice*, relieve the alien from the character of an enemy, and entitles his person and property to protection. 2 *Kent's Com.* 63, citing 1 *Ld. Raym.* 282. 2 *Anst.* 462. 10 *Johns. R.* 69. 6 *Binn. R.* 241. On the other hand, a citizen may acquire a hostile character by his residence, for commercial purposes, in the enemy's country, or, without such residence, by simply connecting himself with a commercial house in the enemy's country, in time of war, or by continuing during the war such a connection formed in time of peace. 1 *Kent's Com.* 73—75. *Bac. Abr.* Aliens, D. *Wheeler, J.* 5 *Texas R.* 240. The rule indeed is now expressly settled, that, for all commercial purposes, the domicile of the party, without reference to the place of birth, becomes the test of national character. 1 *Kent's Com.* 75.

There is a distinction between a permanent and a temporary alien enemy. A man is said to be permanently an alien enemy, when he owes a permanent allegiance to

the adverse belligerent; and his hostility is commensurate in point of time with his country's quarrel. But he who does not owe a permanent allegiance to the enemy, is an enemy only during the existence and continuance of certain circumstances. *Id.* 73.

The plea of "alien enemy" is called in the books "an odious plea," and the rule is that it is not to be favored by intendment. Kent, C. J. 10 *Johns. R.* 71, 72. 25 *Eng. Law & Eq. R.* 334.

To ALIEN or ALIENE. [L. Fr. *aliener*; Lat. *alienare*, from *alienus*, another's.] To make a thing another man's, (*alienum facere*;) to convey or transfer the property of a thing to another; to alienate. Usually applied to the transfer of lands and tenements. *Co. Litt.* 118 b. *Termes de la Ley.* Cowell. See *Alienare*, *Alienus*, *Transferre*.

ALIENAGE. The condition or state of an alien. 11 *Johns. R.* 418. See *Alienism*.

ALIENARE. Lat. [from *alienus*, another's; Gr. *ἁλλοτρίν*.] In the civil and common law. To alien, or alienate; to make another's, (*alienum facere*;) to transfer to another, (*in alium transferre*.) *Inst.* 2. 1. 40. *Id.* 2. 8. pr. et seq. In the civil law it implied delivery of possession. *Corporalis res*—a domino tradita, alienatur; a corporeal thing—when delivered by the owner, is aliened. *Inst.* 2. 1. 40. *Alienatum non propriè dicitur quod adhuc in dominio venditoris manet, venditum tamen recte dicitur*; a thing which still remains in the ownership, or under the control of the seller, is not properly said to be aliened, though it may be said to be sold. *Dig.* 50. 16. 67. *Non alienat qui duntaxat omittit possessionem*; he does not alienate who omits to give possession. *Dig.* 50. 17. 119. The term occurs also in feudal law. *Feud. Lib.* 1, tit. 13. *Id.* lib. 2, titt. 3, 9, 55.

In the common law, this term is confined to real property. *Bract.* fol. 29 a. *In feodo alienavit*; he aliened in fee. *Reg. Orig.* 144 b. *Co. Litt.* 118 b. But see *Litt.* sect. 177. According to Lord Coke, *transferre* is a more general word than *alienare*; for *alienare* is regularly intended of the act of the party; but *transferre* comprehends also acts in law, as descents, escheats and the like. 2 *Inst.* 406. See *Transferre*. The civilians, however, treat them as convertible terms.

ALIENATE. [Lat. *alienare*, q. v.] To convey or transfer; the same as to *alien*, which is the more common word in English and American law. See *To alien*. "Sell, alienate and dispoñe" are the formal words of transfer in Scotch conveyances of heritable property. *Bell's Dict. voc. Alienation*. See 3 *Bell's Appeal Cases*, 100, 121, 125.

ALIENATIO. Lat. [from *alienare*, q. v. Gr. *ἁλλοτρίσις*.] In the civil and feudal law. The transfer of the ownership of a thing to another; alienation. *Inst.* 2. 8. pr. *Dig.* 50. 16. 67. *Feud. Lib.* 1, tit. 13. *Lib.* 2, titt. 52, 55. An implied transfer by prescription, or usucapion, (*usucapio*.) *Dig.* 50. 16. 28. See *Alienare*. In the seventh novel of Justinian, the Gr. *ἁλλοτρίσις* is declared to include sale, gift, exchange and perpetual lease or emphyteusis. *Nov.* 7, c. 1.

The transferring, or granting of a right. *Cod.* 4. 51. 7. 1 *Mackeld. Civ. Law*, 179, § 185. *Abalienatio* (q. v.) was sometimes used.

In the common law. Alienation or conveyance, especially of real property. *Stat. Marlbr.* c. 30. *Bract.* fol. 46. *Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem*. It is unjust that freemen should not have the free disposal of their own property. *Co. Litt.* 223 a. 4 *Kent's Com.* 131.

Alienatio licet prohibeatur, consensu tamen omnium in quorum favorem prohibita est, potest fieri. Though alienation be prohibited, yet, by the consent of all in whose favor the prohibition is, it can be made. *Co. Litt.* 98.

Alienatio rei præfertur juri accrescendi. Alienation of a thing [subject of property] is preferred to the right of survivorship. *Co. Litt.* 185 a. *Broom's Max.* [330.]

ALIENATION. [Lat. *alienatio*, q. v.] Transfer to another, (*in alium*); the act of making a thing another's, (*alienum*); conveyance, particularly of real estate, comprising any method wherein estates are voluntarily resigned by one man and accepted by another. 2 *Bl. Com.* 287. 1 *Steph. Com.* 433. 2 *Crabb's Real Prop.* 1050, § 2437. *Bell's Dict.* A conveyance by way of mortgage is not an alienation. 1 *Comstock's R.* 290, 294.

"Title by alienation" constitutes one of the most important and extensive heads of the common law. 2 *Bl. Com.* chaps. 19—23.

* * The act or process of alienation is, in strictness, compounded of the two acts of divesting one's self of the property intended to be conveyed, and of vesting such property in another. The former of these is very significantly expressed by the Gr. *ἀλλοτρίωσις*, which is used in the Novels of Justinian, and signifies literally, "a making from," "a passing out of" a person, without any reference to an alienee. The latter is as significantly and exclusively expressed by the Lat. *alienatio*, in which the idea of an alienee is the only one conveyed. But as these acts, (in the case of all direct and absolute conveyances,) are, in fact, simultaneous, and to all intents one, and as the latter includes the former, and cannot exist without it, the word *alienatio* and its derivatives have very properly been employed to express the act of transfer, with all the ideas which go to make up the meaning of the word.

ALIENCE, *Aliaunce*. L. Fr. Confederacy; combination. L. Fr. *Dict*.

ALIENE. To transfer, or convey. 2 *Bl. Com.* 290.

ALIENEE. L. Fr. and Eng. A purchaser. *Kelham*.

ALIENER. L. Fr. To alien; to convey or sell. L. Fr. *Dict*.

ALIENI GENERIS. Lat. Of another kind. 3 *P. Wms.* 247.

ALIENI JURIS. Lat. In the civil law. Subject to the power or authority of another, (*alieno juri subjectus*); as of a parent, master or guardian. *Inst.* 1. 8. *Dig.* 1. 6. 1. *Bract.* fol. 6 a. 1 *Mackeld.* *Civ. Law*, 130, § 120. The opposite of *sui juris*, (q. v.)

ALIENIGENA. Lat. [from *alienus*, of another place, and *gignere*, to bear; L. Fr. *alien ne*: the opposite of *indigena*, Fr. *deins ne*.] In old English law. One born abroad; an alien born; an alien. *Bract.* fol. 427 b. *Alienigena est aliena gentis, seu aliena ligentia, qui etiam dicitur peregrinus, alienus, exoticus, extraneus*; an alien born is one of another nation or allegiance, who is also called a foreigner, an alien, one from without or abroad, a stranger. 7 *Co.* 31.

ALIENISM. The state, condition or character of an alien. 2 *Kent's Com.* 56, 64, 69.

ALIENNEE, *Alien-nee*. L. Fr. An alien born. *Kelham*.

In pleading. The plea of alienage, or that the plaintiff in an action is an alien

born, (*alien nec.*) *Archb. Civ. Plead.* b. 1, part 4, ch. 7, sect. 1.

ALIENUS. Lat. [from *alius*, another.] In civil and old English law. Another's; belonging to another; the property of another. *Alienus homo*; another's man, or slave. *Inst.* 4. 3. pr. See *Brissonius*. *Aliena res*; another's property. *Bract.* fol. 13 b. *Sic utere tuo ut alienum non laedas*. Use your own property, or exercise your own right, so as not to injure another's. 1 *Bl. Com.* 306. 3 *Id.* 217.

Of another; done by another; the act of another. *Nemo punitur pro alieno delicto*. No one is (should be) punished for the crime of another. *Wingate's Max.* 336, max. 87.

Of another country; an alien. See *Alien*, *Alienigena*.

ALIMENT. [from Lat. *alimentum*, *alimenta*, qq. v.] In Scotch law. Support; maintenance; a fund of maintenance. *Bell's Dict.* Sometimes called *alimony*.

To ALIMENT. In Scotch law. To support or maintain. "Parents and children are reciprocally bound to *aliment* each other." *Bell's Dict.*

ALIMENTA. Lat. [sing. *alimentum*, from *alere*, to sustain or support.] In the civil law. Aliments; means of support, including food, (*cibaria*.) clothing, (*vestitus*.) and habitation, (*habitatio*.) *Dig.* 34. 1. 6.

ALIMONY. [Lat. *alimonia*, from *alere*, to nourish, or support.] Nourishment; support or maintenance. An allowance made to a wife out of the husband's estate, for her maintenance, either during a matrimonial suit, or at its termination, where she has proved herself entitled to a separate maintenance. That proportion of the husband's estate which the wife sues, in the ecclesiastical court, or court of equity, to have allowed her for her present subsistence and livelihood, according to law, upon any such separation from her husband as is not caused by her own elopement or adultery.* *Shelford, Marr. & Div.* 586. In causes between husband and wife, on the principle that the whole property is supposed by law to be vested in the husband, he is in most cases obliged by law to pay the expenses on both sides, and to allow the wife alimony during the suit. *Id. ibid.* 1 *Bl. Com.* 441. 3 *Id.* 94. 2 *Steph. Com.* 312. 2 *Kent's Com.* 99, 128. This allowance is sometimes called in the old law, the wife's *estover*, or *esto-*

vers. 1 *Bl. Com.* 441. *Cowell.* See *Estovers.*

ALIO INTUITU. Lat. In a different view; under a different aspect. 4 *Rob. Adm. R.* 151.

With another view or object. Lord Ellenborough, 7 *East*, 558. *Id.* 6 *M. & S.* 234.

ALIQUALITER. L. Lat. In any way. *Litt.* sect. 226.

ALIQUID. Lat. Something; somewhat. *Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur.* Something is [will be] conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded. *Co. Litt.* 197 b.

ALIQUID POSSESSIONIS ET (or SED) NIHIL JURIS. L. Lat. Somewhat of possession, and nothing of right, [but no right.] A phrase used by Bracton to describe that kind of possession which a person might have of a thing as a guardian, creditor, or the like; and also that kind of possession which was granted for a term of years, where nothing could be demanded but the usufruct. *Bract.* fol. 39 a, 160 a.

ALIQUIS. Lat. One; a person. *Aliquis non debet esse judex in propria causa (quia non potest esse judex et pars.)* One ought not to be a judge in his own cause, because he cannot be a judge and party both. *Co. Litt.* 141 a. *Broom's Max.* [85.]

ALITER. Lat. Otherwise. A term often used in the reports. *Latch*, 108. "It has been held *aliter* ever since." Holt, C. J. 12 *Mod.* 1.

Aliter puniuntur ex eisdem factionibus, [facinoribus, Dig. 48. 19. 16. 3.] servi quam liberi; et aliter qui quidem aliquid [quid, Dig.] in dominum parentem commiserit, [ausus est, Dig.] quam in extraneum; in magistratum quam in privatum; slaves are punished differently, for the same actions, [crimes,] from freemen; and one who offends against a master or parent, differently from one who does the like against a stranger; and one who offends against a magistrate, differently from one who injures a private individual. *Bract.* fol. 105 a. 3 *Inst.* 220. This is a quotation from the Digests, with the variations noted.

ALIUD. Lat. Another; one thing—another thing. *Aliud est possidere, aliud esse in possessione.* To possess is one thing;

to be in possession is another thing. *Hob.* 163. *Bract.* fol. 206.

Aliud est celare, aliud tacere. To conceal is one thing; to be silent is another thing. Lord Mansfield, 3 *Burr.* 1905, 1910. See *Concealment.*

Aliud est vendere, aliud vendenti consentire. To sell is one thing; to consent to a sale [seller] is another thing. *Dig.* 50. 17. 160.

Aliud est distinctio, aliud separatio. Distinction is one thing; separation is another. "It is one thing to make things distinct, another thing to make them separable." *Bacon's Arg.* Case of Postnati of Scotland, *Works*, iv. 351.

ALIUD EXAMEN. Lat. A different or foreign mode of trial. 1 *Hale's Hist. Com. Law*, 38, [30.]

ALIUNDE. Lat. From another source or quarter. Lord Ellenborough, 2 *East*, 563.

ALL. [Lat. *omnis, totus.*] A word of constant occurrence in deeds, wills and other instruments, and which, especially in wills, has been made the subject of repeated construction by the courts. 1 *Vernon*, 3, 340. 3 *P. Wms.* 56. 1 *Harr. & McH.* 301. Often carelessly used in written instruments, and requiring to be qualified and limited to the subject matter. 15 *Georgia R.* 518. See the examples *infra*.

"All my estate," in a will, has been held to carry a fee. 6 *Mod.* 106, 110. 8 *Vesey, Jr.* 604. Shaw, C. J. 6 *Metcalf's R.* 325, citing 18 *Pick. R.* 537; 4 *Kent's Com.* 535. The words "all his estate," will pass everything a man has; but if the word "all" is coupled with the word "personal," or a local description, then the gift will pass only personalty, or the specific estate particularly described. Lord Mansfield, C. J. *Cowp.* 299, 306. The question whether the words "all my estate and effects" will include a real estate or not, depends, first, upon the immediate context of the will; secondly, upon the general form and scheme of the will, as demonstrating the intention. Lord Eldon, C. 9 *Vesey, Jr.* 137, 142.

"All my estate whatsoever," in a will, comprehends all that the deviser has, real or personal. *Com.* 337.

"All my estate, real and personal, whatsoever," carries a fee, although immediately followed by words descriptive of local situation; as, "that is to say, my land, houses, and all the other buildings situate

at 8." 7 *Taunt.* 35, citing 8 *Term R.* 64.

"All the estate, both real and personal," to which the grantor is "entitled, in law or equity, in possession, remainder or reversion," passes the grantor's whole estate. 3 *Grattan's R.* 518.

"All my personal estate," in a will, was held to be confined to such part only as should not be otherwise disposed of. 9 *Mod.* 93.

"All my temporal estate," construed. 3 *P. Wms.* 295.

"All my property, both personal and real, forever," passes a fee. 11 *East*, 518.

"All and every my property," is as comprehensive as "all I am worth." Lord Ellenborough, 14 *East*, 370. See *infra*. A devise of "all my property," certain described portions excepted, is a general devise. 4 *Maryland Ch. Dec.* 484.

"All my property of every description," in a will, passes not only tangible property, but moneys, stocks, bonds and choses in action. 2 *Jones' Eq. R.* 75.

"All my real property," in a will, has been held to import the same as "all my estate." 18 *Vesey, Jr.* 193.

"All my lands" passes a fee. 1 *Wash. Va. R.* [96.] 126.

"All my personal property, of every name or nature," includes choses in action. 28 *Vermont R.* 26, 27, 31.

"All my notes," in a will, held to include bonds. 2 *Devereux' Eq. R.* 488, 496.

"All I am worth," without other words to control them, pass real as well as personal estate. 1 *Bro. C. C.* 437.

"All I am possessed of," in a will, construed. 5 *Vesey, Jr.* 811, 816.

"All debts due to me," and "whatever debts may be due to me," in a will, pass a bill of exchange, and a balance of cash at a banker's. 1 *Merivale*, 541, note. See 3 *Id.* 434.

"All demands," in a submission to arbitration, held to include questions concerning real as well as personal property. 2 *Caines' R.* 320. 15 *Johns. R.* 197.

"All claims and demands whatsoever," in a release, held to be restricted to the subject matter of the release. 1 *Edwards' Ch. R.* 34. A release of "all demands" will not release a rent before it is due. 2 *Show.* 90. Nor will it bar a future duty. 2 *Mod.* 281.

"All business," in a power or authority, construed with reference to the subject

matter, e. g. confined to all business necessary for the receipt of money. 9 *Bing.* 608. 1 *Taunt.* 356. 8 *Wendell's R.* 498. The largest powers must be construed with reference to the subject matter. *Id. ibid.*

ALL FOURS. A case is said to *go upon all fours*, when it is exactly similar in its circumstances to the case in support of which it is quoted; or when it is exactly in point. See *Currit quatuor pedibus*.

ALLANERLIE, *Allenarly*. Sc. In Scotch law and conveyancing. Only; exclusively. *Skene de Verb. Sign. voc. Ligeantia.* 3 *How. St. Trials*, 699. An important word of limitation; commented on in *Macintosh v. Gordon*, 4 *Bell's Appeal Cases*, 119—124.

ALLEGARE. Lat. To allege or state; to bring forward, or set up, as a claim or defence. *Allegans*; alleging. *Allegatum*, *allegata*; alleged.

Allegans contraria non est audiendus. One alleging contrary or contradictory things [whose statements contradict each other,] is not to be heard. 4 *Inst.* 279. *Jenk. Cent.* 16. Applied to the statements of a witness. 4 *Inst. ub. sup.* And see *Broom's Max.* [127.]

Allegans suam turpitudinem non est audiendus. One who alleges his own infamy is not to be heard. 4 *Inst.* 279.

Allegari non debuit quod probatum non relevat. That ought not to be alleged, which if proved is not relevant. 1 *Chan. Cas.* 45.

ALLEGATA ET PROBATA. L. Lat. Things alleged, and things proved; allegations and proofs. It is a general rule of evidence that the *allegata* and *probata* must agree. A party is not allowed to state one case, and make out a different one by proof. Baldwin, J. 10 *Peters' R.* 177, 209. 1 *Greenl. Evid.* § 51. Story, J. 2 *Sumner's R.* 206, 209. "The cause must stand before the court to be heard *secundum allegata et probata*." *Id. ibid.*

ALLEGATION. [Lat. *allegatio*, from *allegare*, q. v.] In the common law. Statement or pleading. *Steph. Plead.* 1, 123, 124.

The statement of fact, or pleading of a party to an action; such as a declaration, plea, &c. *Id.* 23, 59.

A statement in a particular pleading. *Id. passim*.

ALLEGATION. In English ecclesiastical law. The pleading or statement of a party in a cause; an additional or supple-

mentary pleading. 1 *Bro. Civ. Law*, 471, 473. 3 *Bl. Com.* 100.

A species of pleading, used generally in propounding or contesting a will, claiming an interest in an intestate's effects, &c. 4 *Chitt. Gen. Pr.* 166.

An *allegation of faculties* is an allegation given in by a wife claiming alimony, stating the property of the husband. *Shelford, Marr. & Div.* 587.

ALLEGATION OF DIMINUTION. See *Diminution*.

ALLEGIANCE, *Ligeance*. [L. Lat. *allegiantia*, from *alligare*, to bind to; *ligeantia*, from *ligius*, qq. v.] The tie or bond (*ligamen*.) of fidelity and obedience, by which native-born subjects or citizens are bound to their sovereign, government or country, in return for the protection afforded them.* 1 *Bl. Com.* 366. 4 *Id.* 74. *Hale's Anal.* sect. xiii. 2 *Steph. Com.* 420. 2 *Kent's Com.* 39, *et seq.* See *Natural allegiance*, *Local allegiance*, *Expatriation*.

In England, allegiance is of feudal origin, being formerly sworn to the sovereign as lord paramount or liege lord of the realm. It was an exalted species of fealty, and the oaths of fealty and allegiance were once couched in almost the same terms. 1 *Bl. Com.* 367. The oath of fealty is called by Blackstone the parent of the oath of allegiance. 2 *Id.* 53. In the United States, allegiance is not used in the feudal sense, arising out of the doctrine of tenure. 2 *Hill's* (S. Car.) *R.* 1. 2 *Kent's Com.* 44, note. And see 1 *Comstock's R.* 173.

ALLEGIANCE, *Allegeance*. L. Fr. [from *alleger*, to lessen.] Alleviation; relief; redress. *Kelham*.

ALLEGIARE. L. Lat. [from *ad*, by, and *lex*, law.] In Saxon law. To clear one's self according to law, (*juxta normam legis se excusare*;) to exculpate one's self by taking an oath, (*sacramento interposito se culpâ eximere*;) to wage one's law, (*legem vadiare*.) *Spelman*. See *Lex*, *Ley gager*, *Wager of law*.

ALLER, *Aler*. L. Fr. To go. *Aller a large*; to go at large. *Yearb. M.* 7 Hen. VI. 9.

ALLER A DIEU. L. Fr. In old English practice. To be dismissed from court; to go quit. *Purq' le plaintiff ne prist rien*, &c. *Et le defendant alla a Dieu*. Wherefore the plaintiff took nothing, &c. And the defendant went without day. *Yearb. M.* 8 Hen. VI. 36.

ALLEVIARE. L. Lat. In old records. To levy or pay an accustomed fine or composition. *Cowell*. To redeem by such payment.*

ALLEU, *Aleu*, *Allieu*, *Alieu*. Fr. [L. Lat. *alodum*, *allodium*, q. v.] In French law. An allodial estate, as distinguished from a fief. *Esprit des Lois*, liv. 31, c. 8. *Kelham*. See *Aleu*.

ALLIANCE, *Aliance*, *Alience*. L. Fr. Confederacy; allegation; allegiance. *Kelham*. L. Fr. *Dict.*

ALLIANCE. Fr. and Eng. [from Fr. *allier*, to tie or bind to.] A binding together; union between two or more.

In international law. An union between two nations, or among several, contracted by compact, treaty or league.* *Webster*.

ALLISION. [Lat. *allisio*, from *allidere*, to dash against.] In maritime law. A striking against; the running of one vessel against another; sometimes distinguished from *collision*, which is the running of two vessels against each other, or a striking together. *Jacobsen's Sea Laws*, 326, and note. See *Collision*.

ALLOCARE. L. Lat. In old practice. To allow. *Cum aliquis—petat quod justitarii eam [exceptionem] allocent, quam si allocare noluerint*, &c.; where a party prays that the justices shall allow his exception, which if they refuse to allow, &c. *Stat. Westm.* 2, c. 31.

ALLOCATIO. L. Lat. [from *allocare*, q. v.] In old practice. An allocation, or allowance. *Mem. in Scacc. H.* 22 Edw. I. *Towns. Pl.* 27. See *Allocation*.

ALLOCATION. [L. Lat. *allocatio*.] An allowance made upon an account in the English exchequer. *Cowell*.

ALLOCATIONE FACIENDA. See *De allocatione facienda*.

ALLOCATUR. L. Lat. [from *allocare*, to allow.] In practice. It is allowed. A term used, (when the proceedings were in Latin,) to express the allowance of a thing or proceeding, by a court, judge or judicial officer.* Now applied, in England, to the certificate given by the master, on taxing a bill of costs, showing the amount taxed, or *allowed*. 1 *Tidd's Pract.* 337, 500.

Used also to denote the *allowance* of a writ or order by a judge, which is generally done by the judge's endorsing the word "allowed," and signing his name.

Used also in the earlier reports, to de-

note the *concession* of a point by a court on argument; though the term *concessum* (q. v.) is more frequently employed for this purpose. *Sed non allocatur*, (but it is not allowed,) is a common expression.

ALLOCATUR EXIGENT. In English practice. A species of the writ of *exigent*, in the nature of an *alias* writ; used in the process of outlawry. 1 *Tidd's Pr.* 132. *Archb. N. Pract.* 485. See *Exigent*.

ALLODIAL. [L. Lat. *allodialis*, from *allodium*, q. v.] In the law of estates. That which is not held of any superior; free or independent; the opposite of *feudal*.* In the feudal law, *allodial* estates were distinguished from fiefs. *Esprit des Lois*, liv. 31, c. 8. *Allodial* lands are such as are free from any rent or service. 2 *Bl. Com.* 47, 60, 105. 3 *Ken's Com.* 488, 498, 513, 514. 1 *Robertson's Charles V.* Appendix, note viii.

ALLODIUM, Alodium, Alodum, Alode. L. Lat. [Fr. *alleu*, *aleu*.] In feudal law. Free, absolute or independent ownership; a free estate, (*prædium liberum*;) property held in absolute dominion, without owing any rent, fealty or service to any superior, (*nulli servituti obnoxium*;) every man's own land, held of no one, and of which he has the absolute property.* 2 *Bl. Com.* 105. *Spelman*, voc. *Aloarius*. The opposite of *feudum*, (feud or fief,) which always implies tenure or service. 1 *Steph. Com.* 161. 3 *Ken's Com.* 448. 1 *Robertson's Charles V.* Appendix, note viii. *Feud. Lib.* 2, tit. 26, 54. See *Feudum*, *Beneficium*.

The etymology of this word has been variously given. *Spelman* conjectures it to be derived either from Sax. *a*, to, and *leod*, people; belonging to the people (*popularis*;) because freely alienable from one to another; or from *a*, without, and *leod*, or *leud*, a vassal; without vassalage, service or burden. *Blackstone* considers it the same as *odh al*, in the Northern languages, (*odh*, property, and *al*, all,) with the syllables transposed, *allodh*; and hence signifying entire or absolute property. 2 *Bl. Com.* 45, note (f). *Dr. Robertson* adopts *Wachter's* derivation, from *an*, and *lot*, that is, land obtained by lot. *Hist. Charles V.* Appendix, note viii. A late writer on French history observes that the *sortes* or estates allotted among the Franks, on their invasion of Gaul, were called *al-ods*, because, in the case of each warrior,

they constituted the *whole* of his gain or booty. *Stephen's Lect.* 51.

ALLOIGNER, Alligner, Alloyner, Alyner. L. Fr. To remove to a distance; to carry away; to put off or delay; to eloin. *Kelham*. *Avait alloign' les av's*; had eloined the beasts. *Yearb. M.* 8 *Edw.* III. 45.

ALLONGE. Fr. In French law. A piece of paper annexed to a bill or note, for the purpose of making further endorsements, where no room is left for that purpose on the instrument itself.* *Story on Bills*, § 204. *Story on Prom. Notes*, § 151. See 18 *Pick. R.* 63.

ALLOWER. L. Fr. To let; to hire. *Kelham*.

ALLOYNOUR, Alleynour. L. Fr. One who conceals, steals or carries off a thing privately. *Britt.* c. 17.

ALLUER. L. Fr. In old English law. To allow. *Santz alluer les delais qe sont allues par commune ley*; without allowing the delays which are allowed by the common law. *Artic. sup. Chart.*

ALLUVIO. Lat. [from *alluere*, to wash against, or upon.] In the civil law. A gradual deposit of soil made by a stream upon a piece of ground; in which case, upon the principle of accession, (q. v.) the proprietor of the land becomes also proprietor of the soil deposited. 1 *Mackeld. Civ. Law*, 280, § 267. *Inst.* 2. 1. 20. *Dig.* 41. 1. 7. 1. *Id.* 21. 2. 64. 1. *Cod.* 7. 41. *Est alluvio incrementum latens*; alluvion is an imperceptible increase. *Inst.* 2. 1. 20. *Dig.* 41. 1. 7. 1. *Bract.* fol. 9 a. *Fleta*, lib. 3, c. 2, § 6. *Grot. de Jur. Belli*, lib. 2, c. 8, § 11. It is in this respect distinguished from *avulsio*, or *vis fluminis*. *Inst.* 2. 1. 21. See *Avulsio*. This term has been adopted in the common law under the name of *alluvion*, (q. v.) See *Per alluvionem*.

ALLUVIO MARIS. Lat. In the civil and old English law. The washing up of the sea; formation of soil or land from the sea; maritime increase. *Hale's Anal.* sect. viii. "*Alluvio maris* is an increase of the land adjoining, by the projection of the sea, casting up and adding sand and slubb to the adjoining land, whereby it is increased, and for the most part by insensible degrees." *Hale de Jur. Mar.* pars 1, c. 6.

ALLUVION. [Lat. *alluvio*, q. v.] In the common law. The gradual washing up of sand and earth by a stream or the

sea, so as in time to form land (*terra firma*), where none existed before; the imperceptible increase or gain of land from water by this process.* *Bract.* fol. 9 a. 2 *Bl. Com.* 261, 262. 3 *Kent's Com.* 428, and notes. *Schultes' Aquatic Rights*, 116. *Broom's Max.* 71. 1 *Crabb's Real Prop.* 109, § 105. 26 *Vermont R.* 64, 72. See *Angell on Tide Waters*, chap. viii. and on *Water Courses*, ch. ii. where the subject is considered at large.

ALM, *Alme*. L. Fr. *Soul. L. Fr. Dict. Kelham.* *Curee des almes*; having cure of souls. *Yearb. T.* 9 Edw. III. 14.

ALMESFEH. Sax. In Saxon law. Alms-fee; alms-money. Otherwise called *Peter-pence*, (q. v.) *Cowell.*

ALMOIGN, *Almoigne, Almoine*. L. Fr. [from Lat. *elemosyna*, Gr. *ἐλεησύνη*.] Alms. See *Frank almoign.*

ALMOXARIFAZGO. Span. In Spanish law. A general term, signifying both export and import duties, as well as excise. Derived from the Arabic, and said to signify the same as *portorium* in Latin. *Schmidt's Civ. Law*, 81, note (2.) *Id.* voc. *Almozarifazgo.*

ALNAGE, *Aulnage*. [Fr. *aulnage*, from *aulné*, Lat. *ulna*, an ell.] In old English law. Ell measure; the measuring with an ell. *Stat.* 17 Edw. IV. c. 5. *Blount.* See *Hale de Jur. Mar.* pars 3, c. 27. See *Ulna.*

A duty for measuring cloth. *Brownl.* part 2, 301.

ALNAGER, *Aulnager, Alneger*. [L. Lat. *ulniger, ulnator*.] In English law. A measurer by the ell. A sworn public officer of the king, whose duty it was to look to the assise of woollen cloths made in the country, (that is, to examine and measure them,) and to put seals, ordained for that purpose, upon them, and also to collect the duty or *alnage* for every cloth so sealed. *Stat.* 25 Edw. III. st. 4. c. 1. *Stat.* 3 Ric. II. c. 2. *Cowell.* *Blount.* *Termes de la Ley.* *Brownl.* part 2, 301. The offices of *searcher* and *measurer* were afterwards separated from that of *alnager*, who continued to be merely the collector of the *alnage* duty. *Cowell.* The duty and office were both abolished by the statute 11 & 12 Will. III. c. 20. 1 *Bl. Com.* 275.

ALNETUM. L. Lat. [from *alnus*, an alder tree.] In old English law. A place where alders grow. *Co. Litt.* 4 b. *Shep. Touch.* 95. *Blount.* *Thelwall's Dig.* lib. 1, c. 8, § 24.

ALOARIUS. L. Lat. In old European law. The holder of an *alodium*, or free estate. *Domesday Book*, titt. Sudsex, Comes de Ow. Laneswic. *Spelman.* See *Alodiarius.*

ALODE, *Alodes, Alodis*. L. Lat. In feudal law. Old forms of *alodium*, or *alodium*, (q. v.) *Spelman*, voc. *Aloarius*. 1 *Robertson's Charles V.* Appendix, note viii.

ALODIARIUS, *Alodarius, Aloarius*. L. Lat. [from *alodium*, q. v.] In old English law. The holder of an *alodium*, or free estate; a kind of tenant in free socage. *Spelman*, voc. *Aloarius*. The lord of a free manor. *Blount.*

ALODUM. L. Lat. In feudal law. One's own; one's property, (*proprium*.) *Ducange*, voc. *Alodis*. 1 *Rob. Charles V.* Appendix, note viii.

ALORS. L. Fr. There; at that time; in that place. *L. Fr. Dict. Kelham.*

ALQUONS. L. Fr. Any one. *LL. Gul. Cong.* l. 1.

ALS. In practice. A contraction of *Alias* and *Alios*, (others.) 1 *Inst. Cl.* 8.

"ALSO," in a will, at the beginning of a distinct clause, has the sense of *item*, keeping the clauses distinct. Lord Ellenborough, 4 *M. & S.* 60. Trevor, C. J. 1 *Salk.* 239. But as between two members or parts of the same clause, it may have a conjunctive effect, so as to bring the first part within the application of words used in the last. 4 *M. & S.* 58. See 5 *East*, 87. See *Item*.

ALT. L. Fr. [from Lat. *altus*, q. v.] High. *Kelham.*

ALT. In Scotch practice. An abbreviation of *Alter*, the other; the opposite party; the defender. 1 *Brown's R.* 336, note.

ALT AL EWE. L. Fr. Let him go to the water [ordeal.] *LL. Gul. Cong.* 17.

ALTA PRODTIO. L. Lat. In old English law. High treason. 4 *Bl. Com.* 75. See *High treason*.

ALTA VIA. L. Lat. In old English law. A highway; the highway. 1 *Salk.* 222. *Alta via regia*; the king's highway; "the king's high street." *Finch, Law*, b. 2, ch. 9.

ALTER. Lat. Another; a different person or party; a third person; an opposite party. *Brissonius. Calv. Lex.*

ALTERATION. [from Lat. *alter*, other, another.] A making different; variation or change. An act done upon a written instrument, (by addition or erasure,) by which its meaning or language is changed.

If what is written upon or erased from the instrument has no tendency to produce this result, or to mislead any person, it is not an alteration. The term is, at this day, usually applied to the act of the party entitled under the instrument; and imports some fraud or improper design on his part to change its effect. 1 *Greenl. Evid.* § 566.

ALTERFOITS. L. Fr. At another time; formerly. *Yearb. M. 8 Edw. III.* 20.

ALTERNATIM. L. Lat. Interchangeably. *Litt. sect. 371. Towns. Pl.* 37.

ALTERNATIVE. [L. Lat. *alternativus*.] In practice. The choice of one or the other of two things; that which requires the one or the other of two things to be done. An *alternative writ*, such as a *mandamus*, is one which requires certain acts to be done, or cause to be shown why they are not done.* 3 *Steph. Com.* 683. See *Mandamus*. A rule *nisi* (q. v.) and a rule or order to show cause, are *alternative proceedings*.

Alternativa petitio non est audienda. An *alternative petition* or demand is not to be heard. 5 *Co.* 40. A party is not allowed to make his demand in the *alternative* or *disjunctive*, but must ask for a thing certain, that is, one specific thing. A *maxim* applied to writs in the old real actions.

ALTERNIS VICIBUS. L. Lat. By alternate turns; at alternate times; alternately. *Co. Litt. 4 a. Shep. Touch.* 206.

ALTERUTER. L. Lat. One of the two. 1 *Ld. Raym.* 124.

Each. *Alteruter et quilibet*; each and every. *Towns. Pl.* 23.

ALTHOUGH. See *Licet*.

ALTO ET BASSO. L. Lat. High and low. See *De alto et basso*.

ALTRE. L. Fr. Another; other. *Yearb. M. 9 Edw. III.* 53. *Altrei*; another, other's. *LL. Gul. Conq.* 14.

Altres; others. *Et sil eit retourne altres, vostre challenge est a les testes*; and if he have returned others, your challenge is to the polls. *Yearb. T. 5 Edw. III.* 21.

ALTRESI. L. Fr. Also; in like manner. *LL. Gul. Conq.* 15.

ALTUM, *Altus*. Lat. High; deep. See *Altum mare*.

ALTUM MARE. L. Lat. In old English law. The high sea, or seas. *Co. Litt.* 260 b. The deep sea. *Brownl. part 2, 17. Super altum mare*; on the high seas. *Hob. 212 b.* See *High seas*. The

expression *alta maris* occurs in the old books. See *Galea*.

ALVETUM. A misprint in the Register for *alnetum*, noticed by Theloall in his Digest. *Reg. Orig. 2 a. Thel. Dig. lib. 8, c. 1, § 24.* *Alvey*, however, is used in French. *Kelham. L. Fr. Dict.*

ALVEUS. Lat. In the civil law. The channel or bed of a river or stream. *Inst. 2. 1. 23. Dig. 43. 12. 7. Alveus derelictus*; a deserted channel; the dry bed of a stream. 1 *Mackeld. Civ. Law*, 280, § 267. *Per alvei constitutionem*; by the formation of a channel. *Fleta, lib. 3, c. 2, § 10.*

ALZ, *Az*. L. Fr. They; them. *Kelham*.

AMALPHITAN, or AMALFITAN TABLE. The earliest code of modern sea laws, compiled for the free and trading republic of Amalphi in Italy, about the time of the first crusade, toward the end of the eleventh century. 1 *Azuni's Marit. Law*, 376. 3 *Kent's Com.* 9.

AMARER. Fr. In French maritime law. To moor; to fasten a vessel to a wharf or landing place. (i) *Ord. Mar. liv. 4, tit. 1, sect. 3.*

AMBACTUS. Lat. or old Gallic. A hired servant or messenger; one sent about from place to place; (Gr. *περιεσπῆρος*.) *Spelman*, voc. *Ambascia*. *Ambacti* was the name given to the clients or vassals of the free warriors and proprietors among the Gauls. *Stephen's Lect.* 20. See *Cæsar de Bell. Gall. lib. 6.*

AMBASCIA, *Ambazia*. L. Lat. [from Germ. *ambacht*, service, or Gallic *ambactus*; Lat. *legatio*.] In old European law. An embassy; or service. *Si in dominica ambascia fuerit occupatus*; if he were engaged in the king's service. *LL. Salic. tit. 1, § 3. Spelman*.

AMBASCIATOR, *Ambassiator*, *Ambaxiator*. L. Lat. [from *ambascia*, q. v.] A person sent about in the service of another; a person sent on a service. A word of frequent occurrence in the writers of the middle ages. *Spelman*. See *Ambassador*.

AMBASSADOR. [Lat. *legatus*; L. Lat. *ambasciator*, *ambassiator*, q. v.] In international law. A diplomatic minister or agent; a person sent by one sovereign power to another, with authority to treat on affairs of state. 4 *Inst.* 153. 1 *Kent's Com.* 39. *Tomlins*. Ambassadors belong to the first class of public ministers.

Wheaton's Elem. Intern. Law, 264, (277, 6th ed.) See *Cas. temp. Talbot*, 282.

AMBAXEUR. L. Fr. An ambassador. *Kelham*.

AMBIDEUX, Amedeus, Amdeus, Ambedoi. L. Fr. Both. *Britt. c. 24. Kelham*.

AMBIDEXTER, Ambodexter. Lat. [from *ambo*, both, and *dexter*, the right hand.] One that can use his left hand as well as his right, or that plays or acts on both sides. Applied by Bracton to sheriffs and other bailiffs who took from both sides, (*qui capiunt ex utraque parte.*) *Bract. fol. 117 a.* Applied, in more modern law, to jurors who took money from both sides for giving their verdict. *Termes de la Ley. Cowell. Blount. See Embracer.*

An attorney who acts for both parties, viz. who, after being retained by one side, allows himself to be retained by the other. In *Simon Mason's* case, an attorney was committed and removed from the roll, for being *ambidexter*. *Freem. 74.* To call an attorney "*ambodexter*" was slander. *Finch, Law, b. 3, c. 2.*

AMBIGUITAS. Lat. [from *ambiguus*, doubtful, uncertain, obscure.] Ambiguity; uncertainty of meaning.

Quoties in verbis nulla ambiguitas, ibi nulla expositio contra verba fienda est. As long as there is no ambiguity in the words [of an instrument] there must be no exposition made of it against its words. *2 Bl. Com. 379. Broom's Max. [477.]* When the intent of the parties is clearly expressed, the intent must govern the construction. *Shep. Touch. (by Preston) 101.* See *Quoties in verbis, &c. post.*

Ambiguitas patens; patent, open or apparent ambiguity; that which appears to be ambiguous upon the deed or instrument itself. *Ambiguitas latens*; latent or hidden ambiguity; that which seems certain and without ambiguity, for any thing that appears upon the deed or instrument, but where there is some collateral matter out of the deed that breeds the ambiguity. *Bacon's Max. 90, regula 23. See Ambiguity.*

Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur. A latent ambiguity of words is [may be] supplied, or helped by averment; for that ambiguity which arises out of a fact, [an extrinsic fact,] is [may be] removed by an averment of fact, [that is, by an averment of the fact as it really is.] *Bacon's Max. 90, regula*

23. Thus, if I grant my manor of S. to J. F. and his heirs, here appeareth no ambiguity at all; but if the truth be that I have the manors both of South S. and North S., this ambiguity is matter in fact, and therefore it shall be holpen by averment, whether of them was that the party intended should pass. *Id. 92.* See *1 Powell on Devises, 477. 2 Kent's Com. 556.* In other words, where the ambiguity itself is produced by extraneous circumstances, its explanation must of necessity be sought for through the same medium. *1 Steph. Com. 463.* Latent ambiguity may be supplied by evidence; for an ambiguity which arises by proof of an extrinsic fact may, in the same manner, be removed. *Broom's Max. 260, [468.]*

The word *verificatio*, in this maxim, is generally translated "evidence," or "proof;" but Bacon's own translation is "averment." See *Ambiguity, Averment.*

Ambiguitas verborum patens nulla verificatione suppletur. Ambiguitas patens is never holpen by averment, and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow and subject to averments, and so in effect, that to pass without deed which the law appointeth shall not pass but by deed. *Bacon's Max. 91.* This rule applies not only to deeds, but to written contracts in general, and especially to wills. *Broom's Max. [468, 469.]* It is not, however, of universal application. See *Id. [472.] Cowen, J. 21 Wendell's R. 651, 659. 23 Id. 71, 78. Story, J. 1 Mason's R. 11. Lipscomb, J. 1 Texas R. 377-383.*

AMBIGUITY. [Lat. *ambiguitas*, q. v.] Doubtfulness, uncertainty or obscurity of meaning. Ambiguity in written instruments is either *patent*, (*patens*,) that is, open or apparent; or *latent*, (*latens*,) hidden or concealed.

A *patent ambiguity* is one which appears on the face of the instrument itself, and renders it ambiguous and unintelligible; as if, in a will, there were a blank left for the devisee's name. *Broom's Max. 261, [468.] Smith on Contracts, 28. Bacon's Max. 90, regula 23. See Ambiguitas.*

A *latent ambiguity* is where the instrument itself is, on the face of it, intelligible enough, but a difficulty arises in ascertaining the identity of the subject matter to

which it applies; the ambiguity appearing only in the application of it, and being introduced by evidence of something extrinsic, or by some collateral matter out of the instrument. Thus, if a devise were to *J. S.*, without further description, the ambiguity would lie *hid* until evidence had been produced showing that there was a great number of persons corresponding in name with the devisee, and then it would arise; it becoming a matter of doubt which *J. S.* was meant.* *Broom's Max.* 260, [474]. *Smith on Contracts*, 29. 7 *Man. & Gr.* 17, 18, notes. 2 *Kent's Com.* 556. *Marshall, C. J.* 4 *Cranch's R.* 224.

A latent ambiguity may be explained by extrinsic or parol evidence, but a patent ambiguity, in general, cannot. *Broom's Max. ub. sup.* 2 *Kent's Com. ub. sup.* 1 *Steph. Com.* 463. *Story, J.* 1 *Mason's R.* 11. See *Ambiguitas*.

AMBIGUOUS. See *Ambiguus*.

AMBIGUUS. Lat. [from *ambigere*, to doubt, to be in suspense.] Ambiguous; uncertain; doubtful; obscure; of uncertain meaning: that can be taken in more ways, or understood in more senses than one.

Ambigua responsio contra proferentem est accipienda. An ambiguous answer is to be taken against [is not to be construed in favor of] him who offers it. 10 *Co.* 59.

Ambiguum placitum interpretari debet contra proferentem. An ambiguous plea ought to be interpreted against the party pleading it. *Co. Litt.* 303 b. It is a general rule of pleading, that pleadings must not be ambiguous or doubtful in meaning; and when two different meanings present themselves, that construction shall be adopted which is most unfavorable to the party pleading. *Steph. Pl.* ch. 2, sect. 5, rule 2. *Broom's Max.* 257, 258, [461]. The reverse of this rule applies after an ambiguity has been cured by pleading over, or by verdict. *Id.* 258, [462.]

Verba ambigua fortius accipiuntur contra proferentem. Ambiguous words are [to be] taken most strongly against the party making use of them. 2 *Kent's Com.* 556. *Bacon's Max.* 11, 12, reg. 3.

In *ambigua voce legis, ea potius accipienda est significatio quæ vitio caret, præsertim quum etiam voluntas legis ex hoc colligi possit.* Where the language of a law is ambiguous, that sense is rather to be taken, which is free from vice or wrong, [will have no wrongful operation,] especially where the design of the law can be gathered from the same mat-

ter. *Dig.* 1. 3. 19. Where obscurities, ambiguities or faults of expression, render the meaning of an enactment doubtful, that interpretation shall be preferred which is most consonant to equity, especially where it is in conformity with the general design of the legislature. *Broom's Max.* [442.]

Ambignis casibus semper præsumitur pro rege. In doubtful cases, the presumption always is in behalf of the crown. *Lofft's R.* Appendix, 248.

In *ambignis orationibus maxime sententia spectanda est ejus qui eas protulisset.* In the case of ambiguous statements, the intention of him who used them is chiefly to be regarded. *Dig.* 50. 17. 96. *Broom's Max.* [436.]

Quum in testamento ambigue aut etiam perperam scriptum est, benigne interpretari et secundum id quod credibile est cogitatum, credendum est. Where an ambiguous or even an erroneous expression occurs in a will, it should be construed liberally and in accordance with the testator's probable meaning. *Dig.* 34. 5. 24. *Broom's Max.* [437.]

AMBIT. [Lat. *ambitus*, q. v.] A boundary line, as going around a place; an exterior or enclosing line or limit. 9 *East*, 418. *Story, J.* 10 *Peters' R.* 442.

AMBITUS. Lat. [from *ambire*, to go around.] In the Roman law. A going around; a path worn by going around. *Varro de Ling. Lat.* lib. 4. A space of at least two and a half feet in width, between neighboring houses, left for the convenience of going around them. *Festus, Calv. Lex. Brissonius.*

The procuring of a public office by money or gifts; the unlawful buying and selling of a public office. *Inst.* 4. 18. 11. *Dig.* 48. 14. Literally, a going about, or canvassing for votes.

AMBRA. L. Lat. [Sax. *amber*, Lat. *amphora*.] In Saxon law. A vessel or kind of measure, the capacity of which is now unknown. *LL. Inæ, MS.* c. 67. *Spelman.*

AMBULATORIUS. L. Lat. [from *ambulare*, to walk, or move about.] In the civil and old English law. Ambulatory or moveable; admitting of alteration; not fixed.

Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum. The will of a deceased person is ambulatory until the last moment [end] of life. *Dig.* 34. 4. 4.

Voluntas testatoris ambulatoria est usque ad mortem. The will of a testator is ambulatory, or not fixed, until death. 2 *Bl. Com.*

502. 4 Co. 61. *Shep. Touch.* 401. 1 *Powell on Devises*, 545. No testament is of any effect till after the death of the testator. 2 *Bl. Com. ub. sup.* A man may alter his will at his pleasure. *Shep. Touch. ub. sup.* See *Voluntas*.

AMBULATORY. [L. Lat. *ambulatorius*, q. v.] Moveable; that which moves, or may be moved about; not fixed or stationary. The court of King's Bench in England was formerly called an *ambulatory court*, because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally *ambulatory*. 3 *Bl. Com.* 38, 39, 41. 1 *Robertson's Charles V.* Appendix, note xxiii.

That which may be changed or altered; not fixed in its legal character. The will of a testator is said to be *ambulatory* until death. 2 *Vern.* 77. See *Ambulatorius*. The return of a sheriff has been said to be *ambulatory* until it is filed. *Wilmot J.* 3 *Burr.* 1644.

AMENISE. Gr. In the civil law. Exchange, (*permutatio*.) *Nov.* 55.

AMENABLE. [from Fr. *amener*, *amener*, to lead; or *amainable*, from *main*, a hand.] Tractable or manageable; that may be led or governed. Applied in the old books to a woman that is governable by her husband. *Cowell.* See *Amesnable*.

In modern usage, responsible; subject to answer in a court of justice. *Jacob.*

AMEND. [Fr. *amender*; L. Lat. *emendare*; from *e*, from, and *menda*, a fault, or error.] In practice. To free from error or deficiency; to correct an error; to supply a deficiency. See *Amendment*.

AMENDMENT. [L. Fr. *amendement*; L. Lat. *emendatio*.] In practice. The correction of an error committed in any process, pleading or proceeding at law, or in equity; and which is done either of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. 3 *Bl. Com.* 407, 448. 1 *Tidd's Pr.* 696. 8 Co. 156, [319.] *Mansel on Demurrer*, 104, 149. *Mitford's Chanc. Pl.* 18. 1 *Daniell's Chanc. Pr.* 454. 2 *Id.* 911. 1 *Barbour's Chanc. Pr.* 206. *Com. Dig.* Amendment. *United States Digest*, Amendment.

AMENDER. L. Fr. To amend; to make good; to make up for; to compensate. *Defautes amender*; to make good defaults. *Britt.* c. 21. *Les damages amender*; to compensate for damages. *Id.* c. 27.

AMENDES. L. Fr. *Amenda*. *Dues amendes*; due *amenda*. *Britt.* c. 27. *Amendes de damages*. *Ib. ibid.*

AMENDS. [L. Fr. *amendes*; L. Lat. *emenda*, *emenda*.] In practice. Compensation or satisfaction for an injury, or loss. See *Emenda*, *Emendatio*, *Tender of amends*.

AMENER. L. Fr. In old English law. To lead, as by or in a string. *Et amena ove luy un brace de levraults en son lees*; and led with him a brace of grey-hounds in his leash. *Yearb.* M. 18 Hen. VI. 6.

To lead; to lead away, as an animal that is stolen. *Britt.* c. 24.

To take away or remove. P. 18 Hen. VI. 5.

AMENSURARE. L. Lat. In old English law. To admeasure. *Bract.* fol. 314 a. See *Admensurare*.

AMENSURATIO. L. Lat. [from *amensurare*, q. v.] In old English law. Admeasurement. *Bract.* fol. 314 a. See *Admensuratio*.

AMENUSER. L. Fr. To abridge; to abate; to decrease; to diminish; to annihilate; to fall. *Kelham*.

AMERALIUS. L. Lat. [Gr. ἀμραλιος.] A naval commander, under the eastern Roman empire, but not of the highest rank; the origin, according to Spelman, of the modern title and office of admiral, (q. v.) *Spelman*, voc. *Admiralius*.

AMERCE. [L. Fr. *amercer*, from *merci*, mercy; L. Lat. *amerciari*.] In practice. To impose a pecuniary punishment, penalty or amercement, (q. v.); to fine. See *Fine*.

According to Sir William Blackstone, to be *amerced*, in the old English law, was to be à *mercie*, at the king's mercy (in *miseriordia*), with regard to the fine to be imposed. 3 *Bl. Com.* 376. The French *amercie*, or *amercy*, may be taken in this double sense. *Si soit le gardein amercy*; the keeper shall be *amerced*. *Britt.* c. 11. But, in Latin, to be "in mercy" (*esse in misericordia*), and to be "*amerced*," (*amerciari*) seem to have been originally phrases of different import; the former signifying merely "to be liable to an amercement," "to be condemned to an amercement." *De illis qui sunt in misericordia domini regis, et non sunt amerciati*; concerning those who are in the king's mercy, and are not *amerced*. *Bract.* fol. 116 b. So in *Magna Charta*,—*amercietur—si inciderit in misericordiam nostram*. 9 Hen. III. c. 14. The Statute Roll, 25 Edw. I. m. 39, 40, and Charter

Roll, 28 Edw. I. m. 6, 7, both have *manum* for *misericordiam*, in this passage. *Blackst. Mag. Cart.* p. 66, note. In *misericordia* came to be used in records as expressive of judgment of amercement against either party to a suit, and is literally translated in the phrase "in mercy, &c.," with which judgment records still conclude, although no amercement is ever in fact imposed. 3 *Bl. Com.* 275, 376.

To *amerce* is now used as synonymous with *to fine*, and so it was anciently, in the popular sense of the term. *Richardson's Dict.* But, in law, there was a well established distinction between a fine and an amercement. See *Amercement*.

AMERCEMENT, *Amercement*. [L. Lat. *amerciamantum, misericordia*; from Fr. *merci*, mercy.] In practice. A pecuniary punishment imposed by a court upon an offender; and supposed to be so called either because the offender thereby anciently put himself in the mercy (in *misericordia*) of the king or lord, or because the amount of the punishment was to be mercifully assessed, that is, at a less sum than was actually deserved. *Termes de la Ley. F. N. B.* 76, K. *Co. Litt.* 126 b. 1 *Crabb's Real Prop.* 506, § 653. See *Amerciare*.

* * * Anciently there was an important distinction between an amercement and a fine. A *fine* was a certain punishment, growing expressly out of some statute, and was always imposed and assessed by the court; an *amercement* was imposed by the court in general terms, (*quod sit in misericordia*, that the party be in mercy,) and was afterwards assessed or *affeered* (that is, moderated, and reduced to a certain sum) by the peers or equals of the party, who were hence called *affeerors*. *Cowell. Termes de la Ley. F. N. B.* 76, H. K. 8 *Co.* 38, [77,] 59, [118.] 11 *Id.* 43. 1 *Salk.* 57. 3 *Id.* 33. 4 *Bl. Com.* 379. See *Afeer, Afeerment*. This was pursuant to *Magna Charta*, (c. 14.) and the *Statute of Westminster* 1, (c. 6.) *Bract.* fol. 116 b. See *Amerciare, Misericordia*. Again, a fine was a more severe punishment, imposed for offences of magnitude; an amercement was a lighter or more merciful penalty, adapted to offences of a lighter character; (*multa levis levioribus erratis per misericordiam imposita*.) *Spelman*, voc. *Amerciamantum*. 1 *Manwood's Forest Law*, 166, cited in *Cowell*. See *Fine*. Lastly, the term *amercement* was applied more particularly to pecuniary punishments imposed upon the officers of courts, as sheriffs and coro-

ners, and the word is still used in this sense. *Cowell. Bouvier. United States Digest, Amercement*. See *Amerciare*. In other respects, however, no essential distinction remains between an amercement and a fine. Amercements, in their ancient technical sense, are entirely disused in modern practice.

AMERCIAMENTUM. L. Lat. [from *amerciare*, q. v.] In old English law. An amerciamant, or amercement. *Spelman*. See *Amercement*.

AMERCIARE. L. Lat. In old English law. To amerce. See *Amerce*. *Liber homo non amercietur pro parvo delicto, nisi secundum modum illius [ipsius] delicti*, &c.; a freeman shall not be amerced for a small offence, unless according to the quality of such offence, &c. *Magna Charta*, 9 Hen. III. c. 14. *Et villanus—eodem modo amercietur,—si inciderit in misericordiam nostram*; and a villein shall be amerced in the same manner—if he fall into our mercy. *Id. ibid.* See *Bract.* fol. 116 b. *Scias quod amerciatus es ad unam marcam*, &c. *Et gravius amerciaberis, nisi*, &c.; know that you are amerced at one mark, &c. And you will be more severely amerced, unless, &c. *Reg. Jud.* 18, 41.

AMESNA. L. Fr. [from *amesner*, q. v.] Brought; led or carried away. See *Amesner*.

AMESNABLE. L. Fr. [from *amesner*, q. v.] That may be brought, led or carried. *Fitzh. Justice*, 12 b. *L. Fr. Dict.*

AMESNER, *Amener*. L. Fr. In old English law. To lead. *Amesner son hoste*; to lead his army. *Litt. sect.* 153.

To bring, lead, carry or drive away. *Luy amesneront et carieront. Keilw.* 81 b. See *Amener*.

To cite, or summon. *Pur amesner ou summoner. Thel. Dig.* lib. 1, c. 2.

To bring up the body of a party. *Keilw.* 3.

AMESUREMENT. L. Fr. In old English law. Admeasurement. *Britt.* c. 58. *Reg. Orig.* 155, regula.

AMI, *Amy*. L. Fr. A friend. See *Amy*.

AMICABLE ACTION. In practice. An action between friendly parties; an action commenced and carried on according to a mutual understanding and arrangement, for the purpose of obtaining the judgment of a court in some matter requiring it.

AMICUS CURLÆ. L. Lat. In practice. A friend of the court; one who sug-

gests something for the information of a court.*

This term is frequently applied in the reports to a counsellor of the court, who, being present on an occasion when a judge is doubtful, or uninformed or mistaken in a matter of law, suggests something for the information of the court, such as a case which the judge may not have seen, or does not at the moment remember. 2 *Keb.* 548. It is more rarely applied to counsel arguing in a cause. 11 *Grattan's R.* 656. 2 *Brock. R.* 461.

It is also applied to the parties to actions, suggesting or showing something for their own benefit. Thus, in the Prince's case, (8 *Co.* 15, 29,) the defendants, in addition to their pleadings, *ut amici curiæ*, and to inform the court of the truth, &c., repeated to the court part of an act, &c.

It is also applied to persons who have no right to appear in a suit, but are allowed to introduce evidence to protect their own interests. 11 *Texas R.* 698, 699, 701, 702.

It is finally applied to strangers informing the court of errors in its proceedings, or moving for the correction of such errors. Thus, in the Yearbooks, it is said that any stranger, as *amicus curiæ*, may move the court, &c. H. 4 Hen. VI. 16. *Thel. Dig.* lib. 13, c. 14. *Hardr.* 85, 86. 11 *Mod.* 137.

AMIRAL. Fr. In French maritime law. Admiral. *Ord. Mar.* liv. 1, tit. 1, sect. 1.

AMIRAUTE. Fr. In French maritime law. Admiralty. *Ord. Mar.* liv. 1, tit. 2, art. 1.

AMITA. Lat. (Gr. *πάτρας ἀδελφή*.) In the civil law. A paternal aunt; a father's sister. *Inst.* 3. 6. 1. *Bract.* fol. 68 b.

AMITA MAGNA. Lat. In the civil law. A great aunt; a grandfather's sister, (*avi soror*.) *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15. *Bract.* fol. 68 b.

AMITA MAJOR. Lat. In the civil law. A greater aunt; a great-grandfather's sister, (*proavi soror*;) a father's or mother's great aunt, (*patris vel matris amita magna*.) *Dig.* 38. 10. 10. 16. Called *pro-amita*. *Id.* 38. 10. 1. 7.

AMITA MAXIMA. Lat. In the civil law. A greatest aunt; a great great-grandfather's sister, (*abavi soror*;) a father's or mother's greater aunt, (*patris vel matris amita major*.) *Dig.* 38. 10. 10. 17. Called *abamita*. *Id.* 38. 10. 3.

AMITINUS. Lat. In the civil law. The son of an *amita*, or paternal aunt. *Amitina*; the daughter of an *amita*. *Bract.* fol. 68 b. The children of a brother and the children of a sister were properly the *amitini* of each other. *Inst.* 3. 6. 2. The sons of your paternal aunt (*amitæ tuæ filii*) call you *consobrinus*; you call them *amitini*. *Id. ibid.* In Bracton this word is printed *amitiuus*.

AMITTERE. Lat. In the civil law. To lose. Hence the old Scotch "amitt." He is considered as having lost a thing (*rem amisisse videtur*) who has an action against no one to recover it. *Dig.* 50. 16. 14. *Non videntur rem amittere, quibus propria non fuit.* They to whom a thing never belonged cannot be considered to lose [to have lost] it. *Dig.* 50. 17. 83.

AMITTERE CURIAM. L. Lat. In old English law. To lose the court; to be deprived of the privilege of attending the court. *Amittant curiam regis*; they shall be excluded from the king's court. *Stat. Westm.* 2, c. 44.

AMITTERE LIBERAM LEGEM, or AMITTERE LEGEM TERRÆ. L. Lat. In old English law. To lose one's franklaw; to lose the law of the land. To lose the liberty or privilege of swearing in any court; to lose the capacity of being put upon a jury, or being sworn as a witness in any cause; to be no longer *othesworthe*, as it was called in the rude English of Bracton's time. This was a part of the punishment of those who had become infamous by having perjured themselves, or by having pronounced the word *craven* in the trial by battel. *Glanv.* lib. 2, c. 3. *Bract.* fol. 292 b. *Fleta*, lib. 4, c. 8, § 2. *Id.* lib. 5, c. 22, § 25. *Co. Litt.* 6 b. 294 b. 3 *Bl. Com.* 340. See *Franklaw, Libera lex, Lex terræ, Othesworth*.

AMMIRALITAS. L. Lat. In foreign law. Admiralty. *Loccenius de Jur. Mar.* lib. 2, c. 2, sect. 1, 3, 4. See *Admiralitas*.

AMNESTY. [Gr. *ἀμνηστία*, from *α*, not, and *μνᾶσθαι, μνασθαι*, to remember.] In political law. An act of pardon, or oblivion. *Cowell*.—A public declaration or proclamation that all acts against the established authority shall be forgotten and pardoned. *Hume's Essays*, part ii. essay 11.—A declaration of the person or persons who have newly acquired or recovered the sovereign power in a state, by which they pardon all persons who composed, supported or obeyed the govern-

ment which has been overthrown. *P. Cyclopedia*.

AMOND, *Amont, Amunt*. Sax. [from *a*, priv. and *munde*, protection.] In old European law. Free from wardship or guardianship; one's own master. *LL. Longob. lib. 2, tit. 12, l. 6. Spelman.*

"AMONG." Intermingled with. "A thing which is among others is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior." Marshall, C. J. *9 Wheaton's R.* 194.

AMONT, *Amount, A mount*. L. Fr. Upwards; above. *Kelham*. See *Paramount*.

AMORTIR. L. Fr. [from *mort*, dead.] To alien in mortmain; to amortise. *L. Fr. Dict.*

AMORTISE, *Amortize*. [L. Fr. *amorter*, L. Lat. *amortizare*.] In English law. To alien or convey lands in mortmain; to convey to a corporation. *Stat. 37 Edw. I. st. 2. Stat. 15 Ric. II. c. 5. 2 Bl. Com.* 272. *Shelford on Mortmain*, 36. *Cowell*. See *Mortmain*.

AMORTISEMENT. [L. Fr. *amortissement*; L. Lat. *amortizatio*.] The alienation of lands or tenements in mortmain; sometimes called *amortization*, (q. v.) See *Mortmain*.

AMORTIZATIO. L. Lat. [from *amortizare*.] In old English law. Alienation in mortmain; (*translatio in manum mortuam*;) amortization, or amortisement. *Spelman*.

AMORTIZATION. The same as amortisement, (q. v.)

AMOTIBILIS. L. Lat. [from *amovere*, q. v.] Amoveable; that may be moved, or removed. *Amotibiles et non perpetui. Bract. fol. 12 a.*

AMOTIO. Lat. [from *amovere*, to move or take away.] In the civil law. A moving or taking away. See *Amovere*. "The slightest *amotio* is sufficient to constitute theft, if the *animus furandi* be clearly established." *1 Swinton's R.* 205.

AMOTION. [Lat. *amotio*, from *amovere*, to move, move from, remove or displace.] A putting or turning out; dispossessing of lands. Ouster is an *amotion* of possession. *3 Bl. Com.* 199, 208.

A moving or carrying away; the wrongful taking of personal chattels. *Archb. Civ. Pl. Introd. ch. 2, sect. 3.* See *Amotio*.

The removal of an officer or member of a corporation. *2 Salk.* 436. *1 Stra.* 640. *2 Burr.* 723, 732. *2 Kent's Com.* 297, 298. Properly, the removal of an officer; disfranchisement being the term applied to members. *Angell & Ames on Corp.* § 408, ch. 12. *Wilcock on Mun. Corp.* 270. See *Amovere*.

AMOUNTAUNT. L. Fr. Ascending. *Kelham*.

AMOUR. L. Fr. Grace or favor. *Jour d'amour*; a day of grace. *Kelham*. See *Dies amoris*.

AMOVE. [Lat. *amovere*, q. v.] To move from, remove; to take off or away; to withdraw. See *Amovere*.

AMOVEAS MANUS. L. Lat. [L. Fr. *ouster le main*.] In old English practice. (You remove the hands.) The judgment against the crown on a *monstrans de droit*, or petition *de droit*, that the possession of the lands claimed be restored to the demandant; so called from the emphatic words, *quod manus domini regis amoveantur*; (that the hands of the king be moved or taken off.) *3 Bl. Com.* 257. *4 Steph. Com.* 38.

The name of the writ issued upon such judgment. *F. N. B.* 256, C. *Cowell*, voc. *Ousterlemayn*.

The title of the statute 29 Edward I. *2 Reeves' Hist. Eng. Law*, 241.

AMOVERE. Lat. [from *a*, from, off, or away, and *movere*, to move.] In the civil law. To move away; to remove; to remove without force. *Dig.* 34. 9. 6. *Id.* 47. 9. 3. 5. *Cod.* 7. 19. 6. To remove with a felonious intent; to steal, (*contrectare et furto subtrahere*.) *Brissonius*.

In old English law. To remove; to put out of office. *Si male [tutor] gesserit, amoveri poterit*; if the guardian have misconducted, he may be removed. *Bract. fol. 14 b. Amotus, amoti*; removed. *De bite amoti*; duly removed. *1 Salk.* 436.

To remove a judicial proceeding, as a plaint. *Fleta*, lib. 2, c. 47, § 21.

AMPARO. Span. In Spanish-American law. A document issued to a claimant of land as a protection to him, until a survey can be ordered, and the title of possession issued by an authorized commissioner. *1 Texas R.* 790.

AMPLIARE. Lat. [from *amplius*, more, or *amplus*, large.] In the Roman law. To enlarge or extend time; to grant more or further time, as in cases of obscurity or doubt; to postpone or put off a

cause or trial; to defer the giving of judgment. *Adam's Rom. Ant.* 287, 288.

AMPLIARE. Lat. [L. Fr. *amplier*; from *amplus*, large.] In old English law. To enlarge or extend. *Boni est judicis ampliare jurisdictionem.* It is the part of a good judge to enlarge (or use liberally) his remedial authority. *Chanc. Prec.* 329. *Broom's Max.* 86, [56.] Bracton and Fleta use *ampliare* as the opposite of *coarctare*. *Bract.* fol. 17 b. *Fleta*, lib. 3, c. 9.

AMPLIATIO. Lat. [from *ampliare*, q. v.] In the Roman law. The granting of more or further time for the trial of a cause; postponement of a cause or trial; a deferring of judgment. It was distinguished from *comperendinatio*, (q. v.) *Calv. Lex.*

AMPLIATION. [Lat. *amplatio*, from *ampliare*, q. v.] In the civil law. A deferring of judgment until a cause be further examined. *Calv. Lex. Cowell.* An order for the re-hearing of a cause on a day appointed, for the sake of more ample information. *Halifax Anal.* b. 3, c. 13, n. 32. Resembling the *ulterius concilium* (q. v.) of the English practice.

AMPLIUS. Lat. In the Roman law. More; further; more time. A word which the prætor pronounced in cases where there was any obscurity in a cause, and the *judices* were uncertain whether to condemn or acquit; by which the case was deferred to a day named. *Adam's Rom. Ant.* 287.

AMPLIUS. Lat. In the civil law. More, (*magis, plus*.) *Brissonius.*

In English law. More; more completely; more absolutely. *Quod semel meum est amplius meum esse non potest.* That which is once mine cannot be more completely mine. *Co. Litt.* 49 b. *Shep. Touch.* 212. 2 *Bl. Com.* 314. This maxim is employed by Blackstone to illustrate the old doctrine that livery of seisin, where a freehold remainder was created after a particular estate for years already in being, must not be made to the lessee for years, he being already in possession, but to the remainderman.

AMPRES. L. Fr. After. *Kelham.*

AMTRUSTIO. See *Antrustio*.

AMY, Ami. L. Fr. [Lat. *amicus*.] A friend. See *Alien amy*, *Prochien amy*.

One who is next of blood, or kin. *Litt. sect.* 123. *Co. Litt.* 88 a. See *Cousin*.

AN, Ane, Aenne. Sax. A, one; single or sole. *Spelman.*

AN, Ann, Anne. L. Fr. [from Lat. *an-*

nus.] A year. *De an en an*; from year to year. *Britt.* c. 41. *Ann* is a title in Comyn's Digest.

AN ET JOUR. Fr. and L. Fr. Year and day; a year and a day. *Le an et le jour.* *Britt.* c. 5. *Un an et un jour.* *Id. L'an et jour.* *Ord. Mar.* liv. 3, tit. 11, arts. 10, 11. *Id.* liv. 4, tit. 9, art. 24. See *Year and day*.

AN, JOUR ET WAST. L. Fr. Year, day and waste. *Termes de la Ley.* See *Year, day and waste*.

ANATOCISM. [Græco-Lat. *anatocismus*, q. v.] Interest upon interest. See *infra*.

ANATOCISMUS. Græco-Lat. [Gr. *ἀνατόκισμος*, from *ἀνα*, again, and *τόκος*, interest.] In the civil law. Repeated, or doubled interest; compound interest. *Cod.* 4. 33. 28, 30. *Loccenius, de Jur. Mar.* lib. 2, c. 6, sect. 5.

ANCESSEUR. Norm. In old French law. Ancestor; an ancestor. *Grand Coust. de Norm.* c. 30.

ANCESTOR. [L. Fr. *auncestre*; Norm. *ancesseur*; L. Lat. *antecessor*, from *antece-dere*, to go before.] In the law of descents. One who has *gone before*, or preceded in the seisin or possession of real estate; a deceased person from whom an estate has passed to another by operation of law, in consequence of his decease.* The person last seised of an estate of inheritance, and from whom such estate is transmitted by descent to the heir.* 2 *Bl. Com.* 200, 208. 1 *Steph. Com.* 218. *Ruggles, C. J.* 1 *Selden's R.* 275, 276. One from whom an estate is inheritable. 3 *Ohio R.* (N. S.) 394. See *Antecessor*, *Predecessor*, *Ascendant*.

* * It is said in the old books, that the word *ancestor*, in the forensic sense, was not properly applied to the ancestor of a family, but either to the pre-possessor of an estate, or the predecessor in an office. *Termes de la Ley.* It seems to have originally been, like its correlative *heir*, strictly a *nomen juris*, though it acquired the popular sense in which it is now used, at a very early period. *Richardson's Dict.* Its technical meaning was very significantly expressed by its Latin form, (*antecessor*, q. v.); but it appears from Bracton that even the latter word had begun to be used in his time, in senses not strictly appropriate, as where it was employed to denote a *living* person. *Bract.* fol. 67. A similar misapplication of the word *ancestor* sometimes

occurs in modern law; an instance of which is furnished by the recent English statute for the improvement of the law of inheritance, in which "descent" is defined to be "the title to inherit land by reason of consanguinity, as well *where the heir shall be an ancestor*, or collateral relation, as where he shall be a child or other issue." *Stat. 3 & 4 Will. IV. c. 106. 1 Steph. Com. 257, note (b).* Ancestor is here used in the sense of a living person in the ascending line of kindred, and in such connexion with the word *heir* as to confound the established relation between the terms. Ancestor and *heir* are, in law, strictly the correlatives of each other, having a fixed meaning, and not admitting of being interchangeably or indifferently applied, as between two given persons. An ancestor is a *deceased* person from whom an estate has passed, just as an heir is the *living* person to whom it has passed; nor can the same person properly be said to stand in the relations both of ancestor and heir to another. That ancestor imports, *ex vi termini*, a deceased person, seems to be settled by the maxim which fixes the meaning of *heir*: *Nemo est hæres viventis*, (q. v.) See *Heir, Descent*.

ANCESTOR. [See *supra*.] In the law of descents (of persons.) One who has gone before in a family. *Wharton's Lex.* One who has preceded another in a line of descent; one from whom a person is descended.* This is the popular, and not the legal meaning of the term, (Ruggles, C. J. 1 *Selden's R.* 275;) and the use of the word, in this sense, in immediate connexion with the word "*heir*," has sometimes led to confusion. See *supra*. Ascendant (q. v.) is the word which should be substituted in such cases.

ANCESTRAL, *Ancestrel*. [L. Fr. *ancestrel*.] Relating to ancestors, or to what has been done by them; as *homage ancestral*, (q. v.)

Derived from ancestors. Ancestral estates are such as are transmitted by descent, and not by purchase. 4 *Kent's Com.* 404. 2 *Hilliard's Real Prop.* 160, 197, 204.

ANCHORAGE. In English law. A prestation or toll for every anchor cast in a port; and sometimes, though there be no anchor. *Hale de Jur. Mar.* para. 2, c. 6. See 1 *W. Bl.* 413, *et seq.* 4 *Term R.* 260.

ANCIENT DEMESNE. [L. Fr. *auncien demeyne*; L. Lat. *antiquum dominicum, vetus patrimonium domini*.] In English

law. A species of copyhold tenure existing in certain manors which, though now perhaps granted out to private subjects, were actually in the hands of the crown in the time of Edward the Confessor, or William the Conqueror, and so appear to have been by Domesday Book, in which they were entered.* 1 *Steph. Com.* 211. 2 *Bl. Com.* 99. 1 *Crabb's Real Prop.* 713, § 924. *Hob.* 188. 4 *Inst.* 269. Hence the fact of the existence of this tenure is always tried by Domesday Book. 1 *Show.* 271. *Yearb.* T. 8 *Edw. II.* It seems to have been originally a species of villein socage; the tenants being the same with those who are described by Bracton as *glebæ ascripticii*, (q. v.) *Bract.* fol. 209. See *Id.* fol. 7. It is called *ancient demesne*, as having been peculiar to the demesnes or manors of the crown, from a very early period, that is, at or before the conquest; (*ante conquestum, in conquestu.* *Id.* *ibid.* See *Antiquum dominicum, Demesne*.

ANCIENT HOUSE. In the law of estates. A house which has stood so long as to acquire the privilege of support from the land of another adjoining it; so that the owner of the latter cannot excavate his ground to its injury. This right of support is a species of easement or privilege in the lands of another. See *Easement, Support*. 1 *Crabb's Real Prop.* 416, § 500. 3 *Kent's Com.* 437, note. *Gale & Whalley on Easements*, 216—267. In England, if a house has stood twenty years, it is now considered to have acquired the rights of an ancient house. 1 *Crabb's Real Prop.* 417, § 501. 1 *Ad. & Ell.* 493.

ANCIENT LIGHTS, or WINDOWS.

In the law of estates. Lights or windows in a house, which have been exclusively enjoyed, without interruption, for twenty years and upwards. To these the owner of the house has a right by prescription or occupancy, so that they cannot be obstructed or closed by the owner of the adjoining land which they may overlook.* *Calthrop's R.* 41. 1 *Crabb's Real Prop.* 387, § 452. 3 *Kent's Com.* 448. 2 *Bl. Com.* 402. *Stat. 2 & 3 Will. IV. c. 73, s. 3.* This doctrine of ancient lights, or "servitude of light or prospect," as it is called in the civil law, is recognised in several of the United States, though in some of the states it has been questioned. 12 *Mass. R.* 157, 220. 1 *Dudley's (S. C.) Rep.* 131. 1 *Green's (N. J.) Ch. Rep.* 57. 19 *Wendell's R.* 309. 2 *Watts' R.* 331. 5 *Harr. &*

Johns, 477. 10 *Alabama R.* 63. 2 *Kent's Com.* 448. 2 *Hilliard's Real Prop.* 81.

ANCIENT READINGS. Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law. *Litt.* sect. 481. *Co. Litt.* 280. Lord Coke has very graphically contrasted these with the later, or new readings. *Id. ibid.*

ANCIENT RENT. "That shall be deemed the ancient rent which was the rent at the time the power was reserved, or when the last lease before was made, if the estate was not then under lease." 2 *Vern.* 542, cited by Lord Denman, C. J. 2 *Ad. & Ell.* 724.

ANCIENT WRITINGS. In evidence. Deeds, wills, leases and other instruments more than thirty years old. 1 *Phillipps' Evid.* 477. *Cowen & Hill's note, in loc.*

ANCIENTRY. Seniority of rank. 1 *How. St. Trials*, 959.

ANCIENTS. In English law. A title given to certain members of the Inns of Court and Chancery. *Cowell. Holthouse. Wharton.* Serjeants were distinguished as *ancient* and *puisne*. *Cra. Jac.* 2, 671.

ANCIENTY. [L. Fr. *anciennete*.] In old English law. Seniority, or esnecy, (q. v.) *Stat. Hibern.* 14 Hen. III. *Cowell.*

ANCILLARY. [L. Lat. *ancillaris*, from *ancilla*, a hand-maid.] Attendant upon; subservient to; auxiliary; subordinate; dependent; not original. An appointment is said to be *ancillary* to the former deed containing the power of appointment. 1 *Steph. Com.* 507. An administration is said to be *ancillary*, where it is taken out in the country where the assets are locally situate, and is subordinate to the original administration. 1 *Story's Eq. Jur.* § 583. "It is beneath the dignity of the king's courts to be merely *ancillary* to other inferior jurisdictions." 3 *Bl. Com.* 98. "The process, although criminal in its form, was merely *ancillary* to civil purposes." Lord Ellenborough, 16 *East*, 293. See 21 *Alabama R.* 704. Lord Hobart says of a clause beginning with a *videlicet* or *scilicet*, that it "is a *clausula ancillaris*, a kind of hand-maid to another clause, and to deliver her mind, not her own. And therefore it is a kind of interpreter; her natural and proper use is to particularize that that is before general, or distribute that that is in gross, or explain that that is doubtful or obscure." *Hob.* 172.

ANCIPITIS USUS. Lat. In international law. Of doubtful use; the use of which is doubtful; that may be used for a

civil or peaceful, as well as military or war-like purpose. *Grotius de Jur. Bell.* lib. 3, cap. 1, § 5, subd. 3. 1 *Kent's Com.* 140.

"AND," in written instruments, is frequently construed to mean "or," where reason and the intent of the parties require it. Thus, where A. covenanted with B. to renew a lease for years of land to him and to his assigns at such a time, it was held that this should be construed "to him or to his assigns;" so that if B. died before the time, the lease should be made to his assigns, that is, his executors, alone. *Plowd.* 284, 289. See 1 *Wendell's R.* 388. So, in wills, a like construction is frequently adopted to give effect to all the words, and to the intention of the testator. 3 *Vesey, Jr.* 450. 7 *Id.* 453. In a case where a will contained the words, "with the consent and approbation," followed by the words "without such consent or approbation," the court construed the "and" in the first clause, in the disjunctive. *Amb.* 256. In another case, where a will contained the words "if he die before twenty-one, and without issue," the court construed "and" to mean "or." 2 *Vesey*, 240. But in another case, where a will contained the same words, the court construed the word "and" in its natural conjunctive sense, there not existing the same reason for a different construction, as in the preceding case. 12 *East*, 288. Sometimes the word "and" has merely a disjunctive effect, without meaning "or." See 8 *Co.* 85 b. A similar rule of construing the conjunctive particle in a disjunctive sense, prevailed in the civil law. *Sape ita comparatum est, ut conjuncta pro disjunctis accipiantur.* *Dig.* 50. 16. 53. See *Conjuncta*.

"AND, IN ADDITION TO THAT," at the commencement of a clause in a will, was held to import the introduction of new and distinct matter, more clearly than the old word "item." 26 *Vermont* (3 *Deane's*) *R.* 260, 268.

ANDIGAVIA. L. Lat. Anjou in France. *Magna Charta*, in pr.

ANDROCHIA. L. Lat. In old English law. A dairy-woman. *Fleta*, lib. 2, c. 87.

ANDROLEPSIA. Græco-Lat. [Gr. *ἀνδρόληψία*, from *ἀνдр*, a man, and *ληψις*, a taking.] A taking of men; a species of reprisals. A term anciently applied to the taking by one nation of the citizens or subjects of another, for the purpose of enforcing some claim of right; as to compel the surrender or punishment of a murder-

er who had fled from one country to another. *Molloy de Jur. Marit.* 26. 28. It was derived from the ἀνδραποδία of the Athenian law, which signified the right given to relatives of a citizen who had died a violent death, of seizing a number (not more than three) of the citizens of the place where he was slain, or to which the slayer had fled, until either the crime was punished, or the offender given up. *Demosth. Or. adv. Arist.* p. 440, quoted by *Grotius, De Jur. Bell.* lib. 3, c. 2, § 3.

ANECIUS, *Enecius, Enetius.* L. Lat. [L. Fr. *aisne.*] In old English law. The eldest or first born. *Spelman*, voc. *Aesneccia.* See *Aesneccy, Esneccy, Enitius.*

ANEL. L. Fr. A ring. *Aneals*; rings. *Yearb.* P. 8 Edw. II. 275.

ANFRACTUS. Lat. [from *ambire*, to go round, and *frangere*, to break.] In the Roman law. The turn or bend of a way (*via*) or road. *Dig.* 8. 3. 8.

ANGARIA. Græco-Lat. [Gr. ἀγγαρία, from Persian.] In the Roman law. A forced or compulsory service, (*servitus coacta*;) an impressment. A service exacted by government, for some public purpose. A forced contribution of labor, horses, vehicles, &c., for the public service. *Dig.* 50. 4. 18. 4. *Cod.* 12. 51.

In feudal law. An excessive service or duty; one that was exacted by a superior, beyond what was due, (*id quod præter debitum exigitur per superiores à subditis.*) *Spelman.* An extraordinary service exacted by the sovereign, and appertaining to his prerogative, (*regalia*;) such as services of labor and carriage, especially the latter. *Feud. Lib.* 2, tit. 56. *Hotom. de Verb. Feud.*

In maritime law. A forced service, (*onus*;) imposed on a vessel for public purposes; an impressment of a vessel, (*Swed. ziena*; Germ. and Belg. *grissen.*) *Loccen. de Jur. Mar.* lib. 1, c. 5, §§ 1—6.

This is said to have been a Persian word, transmitted to the Greeks through a Hebrew channel. *Herodotus*, lib. 8. *Hesychius.* *Suidas.* *Loccen. de J. M.* lib. 1, c. 5. *Angariation* is used as an English word by old writers. *Richardson's Dict.*

ANGARIARE. L. Lat. [Gr. ἀγγαρίζω.] In old records. To compel; to burden with exactions. *Spelman.* The Gr. ἀγγαρίζω (shall compel,) occurs in *Matt.* v. 41.

ANGARUS. [Gr. ἀγγαρός.] A Persian word signifying a messenger, (*nuntius*;) In Greek, a porter, (*bajulus*;) or bearer of

burdena. *Angari* were posta, and *angara* the places where they stopped or rested. *Spelman.*

ANGILD, *Angeld.* Sax. [from *an*, one, and *gild*, a payment or satisfaction; L. Lat. *angildum, angildus.*] In Saxon law. The single value of a man, or other thing, (*simplex valor hominis aut rei alicujus*); a single weregild, (*weregildum simplex*); the compensation of a thing according to its single value or estimation. *Spelman.* The double gild or compensation was called *twigild*, the triple, *trigild*, &c. *Id.* *LL. Inæ*, c. 20, cited *ibid.* See *Gild, Geld.*

ANGLESCHERIA. L. Lat. In old English law. Englishery; the fact of being an Englishman. *Nisi de eo fuerit Anglescheria præsentata, ubi sciri possit quod Anglicus erat.* *Fleta*, lib. 1, c. 30. *Bracton* uses *Englescheria*, (q. v.)

ANGLETERRE. L. Fr. England. See *Engleterre.*

ANGLIA. Lat. In old English law. England. *Exire de Anglia, et venire in Angliam, et morari et ire per Angliam*; to go out of England, and to come into England, and to stay and go through England. *Mag. Cart.* 9 Hen. III. c. 30.

ANGLICE. Lat. In English. A term anciently used in pleading, where a thing was described both in Latin and English; the Latin word being first given, and then the English, preceded by the word *Anglicé*, thus: *Quare cepit decem velamina, Anglicé coifs*; *pileum, Anglicé*, a cap; *quatuordecem colores, Anglicé*, neck-bands; *cruralia, Anglicé*, garters, &c. *St.* 125. *Towns. Pl.* 16, 101. *De quadam ripa, Anglicé*, a dam. *Hob.* 193.

* * The pleadings in actions were formerly in Latin, that the records might be kept forever without changing; and therefore it was necessary that there should be proper Latin words to express the cause of action, or a proper periphrasis, or a proper Latin description containing sufficient certainties; but if there were no proper Latin words to express the thing, it was sufficient to form the word under a Latin termination, (or, in other words, to coin a Latin word,) and explain it by an *Anglicé*. So, where the Latin word was equivocal, and signified more things than one, it might be fixed down by an *Anglicé*. *Gilb. Com. Pleas*, 126. And it was a rule that an *Anglicé*, (which was but a *videlicet*, or "that is to say,") should never exceed the Latin. *Hob.* 172 a.

ANGLICUS. Lat. In old English law. English; an Englishman. *Fleta*, lib. 1, c. 30.

ANHLOTE, Anlote, Anlot. Sax. [from *an*, one, or own, and *hlote*, a portion, or share.] In Saxon law. One's own portion; an individual tax; a share in a general tax. *Anlote* and *Anscote* is mentioned in a law of William the Conqueror, as a customary tax or payment of the Anglo-Saxons, to which every one contributed. *Spelman*. Lambard supposes this to be the same with what was commonly called *scot* and *lot*. *Id.* See *Lot*, *Scot*, *Scot* and *lot*.

ANICHILEE. L. Fr. [from Lat. *nichil*, or *nihil*, nothing.] Made void or nought; annulled; anichiled or adnichiled. *Kelham*. See *Adnichilare*.

ANIENT, Aniente, Anyent, Anyenty. L. Fr. Void; of no force or effect; made void or taken away; defeated; barred; annulled. *Litt.* sect. 741. *L. Fr. Dict. Fet Assaver*, § 45.

ANIENTER, Anientir, Anyentir, Anentir. L. Fr. To make void, or annul; to take away, or destroy; to defeat; to bar. *Kelham*.

ANIENTISEMENT. L. Fr. Destruction; waste; diminution; annulling. *Kelham*.

ANIMAL. Lat. and Eng. [from *anima*, breath, life.] A living thing or creature, other than human, having the power of voluntary or self motion.* *Quod se movet. Calv. Lex. Dig.* 50. 16. 93. Distinguished from movable things *quæ anima caret.* *Dig.* 6. 1. 1. 1. Distinguished from man. *Id.* 1. 1. 1. 3. *Id.* 50. 16. 135.

ANIMO. Lat. [abl. of *animus*, q. v.] With the intention or design. *Quo animo*; with what intent. *Considerandum est quo animo, quæ voluntate quid fiat*; it is to be considered with what intent, or with what will a thing is done. *Bract.* fol. 101 b. This is a very common expression in the books. 8 Co. 290. 1 *Kent's Com.* 77.

Animo cancellandi; with the intention of cancelling. 1 *Eq. Cas. Abr.* 409, pl. 3. 3 *Rep. in Ch.* 159. 1 *Powell on Devises*, 603. 14 *East*, 423.

Animo felonico; with felonious intent. *Hob.* 134.

Animo furandi; with the intention of stealing. *Bract.* fol. 150 b. 1 *Kent's Com.* 183.

Animo lucrandi; with the intention of gaining with the view to gain or profit.

Inst. 2. 1. 16. *Bract.* fol. 9 a. 2 *Kent's Com.* 357.

Animo manendi; with the intention of remaining. 1 *Kent's Com.* 76.

Animo morandi; with the intention of staying. Lord Ellenborough, 10 *East*, 25.

Animo republicandi; with the intention of re-publishing. 1 *Powell on Dev.* 609.

Animo revertendi; with the intention of returning. 1 *Kent's Com.* 78.

Animo revocandi; with the intention of revoking. Lord Mansfield, C. J. *Cowp.* 52. 1 *Powell on Dev.* 595.

Animo testandi; with the intention of making a will. *Freem.* 265.

Animo et corpore; by the mind, and by the body; by the intention, and by the physical act. *Dig.* 50. 17. 153. *Id.* 41. 2. 3. 1. *Fleta*, lib. 5, c. 5, §§ 9, 10.

ANIMUS. Lat. Mind; will; disposition; intention or design. *Animo*, (q. v.); with the intention or design. These terms are derived from the civil law.

Animus hominis est anima scripti. The intention of the party is the soul of the instrument. 3 *Bulstr.* 67. *Pitman, Princ. & Surety*, 26. In order to give life or effect to an instrument, it is essential to look to the *intention* of the individual who executed it.

Few maxims have been expressed in briefer and more comprehensive language than this; but its point and force, consisting in the use of *animus* and *anima*, in their appropriate senses, are lost in most of the translations which have been given of it.

ANIMUS CANCELLANDI. The intention of cancelling. Lord Ellenborough, C. J. 14 *East*, 423. See *Animo cancellandi*.

ANIMUS CAPIENDI. The intention of taking. 4 *Rob. Adm.* 155. 4 *Id.* 126.

ANIMUS DERELINQUENDI. The intention of abandoning, 4 *Rob. Adm.* 216.

ANIMUS DONANDI. The intention of giving. *Non valet donatio nisi tam dantis quam accipientis concurrat mutui consensus et voluntas; sc. quod donator habeat animum donandi, et donatorius animum recipiendi*; a gift is not valid unless there be a concurrence of the mutual consent and will both of the giver and receiver; that is, the donor must have the intention of giving, and the donee the intention of receiving. *Bract.* fol. 15 b.

ANIMUS FURANDI. The intention of stealing. The felonious intent or design, which is necessary to make the taking of

the property of another, theft or larceny. *Bract.* fol. 150 b. 4 *Bl. Com.* 232. 4 *Steph. Com.* 157.

ANIMUS LUCRANDI. The intention of gaining. See *Animus lucrandi*.

ANIMUS MANENDI. The intention of remaining; intention to establish a permanent residence. 1 *Kent's Com.* 76. This is the point to be settled in determining the domicile or residence of a party. *Id.* *ibid.* 77. See *Animus revertendi*.

ANIMUS RECIPIENDI. The intention of receiving. See *Animus donandi*.

ANIMUS RECUPERANDI. The intention of recovering. *Loccenius de Jur. Mar.* lib. 2, c. 4, s. 10.

ANIMUS REPUBLICANDI. The intention of re-publishing. 1 *Powell on Devises*, 609.

ANIMUS RESTITUENDI. The intention of restoring. *Fleta*, lib. 3, c. 2, § 3.

ANIMUS REVERTENDI. The intention, or disposition of returning. A term employed in the civil law, in expressing the rule of ownership in tamed animals. *In is animalibus quæ ex consuetudine abire et redire solent, talis regula comprobata est; ut eousque tua esse intelligantur, donec animus revertendi habeant: nam si revertendi animus habere desierint, etiam tua esse desinunt, et sunt occupantium.* Revertendi autem animus videntur desinere habere tunc, cum revertendi consuetudinem deseruerint. In respect to those animals which go away and return habitually, the rule is this; that they are considered as yours as long as they retain an inclination to return, but if they cease to have this inclination they cease to be yours, and become the property of any who may take them. And they may be supposed to cease to have the inclination of returning when they actually relinquish the habit of returning. *Inst.* 2. 1. 15. This rule is adopted by Bracton almost word for word, and has become a part of the modern common law. *Bract.* fol. 9 a. *Fleta*, lib. 3, c. 2, § 4. 7 *Co.* 16—18. *Finch, Law*, b. 2, ch. 17. 2 *Kent's Com.* 348.

This phrase is also applied to persons in modern law, in discussing questions of domicile. 1 *Kent's Com.* 78.

ANIMUS REVOCANDI. The intention of revoking. *Cas. temp. Hardw.* 213. See *Animus revocandi*.

ANIMUSTESTANDI. Intention of willing; intention or purpose to make a will. *Worthington on Wills*, prel. obs.

Mind or capacity to make a will. *Mad-*

men, idiots, and persons born deaf, blind and dumb, are incapable of having *animus testandi*. 2 *Bl. Com.* 497.

ANIONTEZ, *Aniores*. Gr. [from *ἀνίωμι*, to ascend.] In the civil law. Persons in the ascending line; ascendants. *Nov.* 118, c. 2. *Nov.* 22, c. 22.

ANN, Annat. In Scotch law. Half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin after his decease. *Whishaw. Bell's Dict. P. Cyclopedia*, Annates. See *Ersk. Inst.* b. 2, tit. 10, §§ 65—67.

ANNALES. Lat. [from *annus*, a year.] Annuals; a title formerly given to the Year Books. 9 *Lond. Legal Obs.* 323.

In old records. Yearlings; cattle of the first year. *Cowell*.

ANNALY. In Scotch law. To alienate; to convey. *Skene de Verb. Signif. vocc. Annexation, Annuell, Recognition*.

ANNATES, Annata. L. Lat. [from *annus*, a year.] In English ecclesiastical law. The first year's whole profits of a spiritual preferment, anciently paid by the English clergy to the pope, but in the reign of Henry VIII. transferred to the crown; called in modern law *first fruits*. *Spelman. Termes de la Ley.* 1 *Bl. Com.* 284. See *First fruits*.

ANNEXATION. [L. Lat. *annexatio*, from *annectere*, to knit or join to.] The fastening of chattels to the freehold, or the letting them into it, which gives them the character of fixtures. *Grady on Fixtures*, 2, 52. 3 *East*, 38. 2 *Smith's Lead. Cas.* 99, 114. 1 *Hilliard's Real Prop.* 64, 70. See *Fixtures*.

In Scotch law. The act of uniting lands to the crown, and declaring them unalienable. *Bell's Dict.*

The appropriating of church lands to the crown. *Id.*

The union of lands lying at a distance from the kirk to which they belong, to the kirk to which they are more contiguous; called annexation *quoad sacra*. *Id.*

ANNEZ, Anz. L. Fr. Years. *Kelham*.

ANNI ET TEMPORA. Lat. Years and terms. An old title of the Year Books. 9 *Lond. Leg. Obs.* 323.

ANNI NUBILES. Lat. In the civil law. Marriageable years; the marriageable age of woman, viz. twelve years. 2 *Inst.* 434. See *Infra annos nubile*. The age of twelve in the female, and fourteen in the male. *Tayl. Civ. Law*, 299.

ANNICULUS. Lat. In the civil law. Of one year's age; a child of a year old. *Bract.* fol. 63 b. *Anniculus—trecentesimo sexagesimo-quinto die dicitur, incipiente planè non exacto die, quia annum civiliter non ad momenta temporum, sed ad dies numeramus;* a person is said to be a year old, on the three hundred and sixty-fifth day [after birth], when it has clearly begun, and before it has passed, because we reckon a year civilly not by moments of time, but by days. *Dig.* 50. 16. 134. See *Id.* 132. *Calv. Lex.*

ANNIVERSARY. [Lat. *anniversarium*, from *annus*, a year, and *vertere*, to turn.] In old ecclesiastical law. An annual day established in commemoration of some deceased person. Called in English, a "year-day," a "mind-day." *Spelman.*

ANNOISANCE. See *Annoyance.*

ANNONA. Lat. [from *annus*, a year.] In the civil law. Corn or grain; provisions; annual means of subsistence; provision for a year's subsistence, not only of grain, but other things. *Calv. Lex. Dig.* 48. 12. *Annonæ* were contributions of various articles, by the owners or occupants of farms in the provinces, for the use of the army; such as bread, meat, oil, salt, grain, wine, hay, straw, &c. *Cod.* 10. 16. *Calv. Lex. Brissonius. Annonæ civiles;* ordinary contributions of a similar kind, by way of rent, paid to ecclesiastical persons and others. *Cod.* 1. 2. 14. *Id.* 5. 13. 7. *Id.* 6. 24. 12. Called *panes civiles.* *Id.* 5. 12. 31. 2.

In old English law. Corn or grain. *Spelman. LL. Edw. Conf. c. 8. Domesday. L. Salic. tit. 24, § 1.*

Whatever is laid up for a year's subsistence, (*quicquid in annum alimonium reconditur.*) *Spelman.*

ANNOTARE, Adnotare. Lat. [from *ad*, to, and *notare*, to mark.] In the civil law. To mark upon; to designate. To designate a place of deportation. *Dig.* 32. 1. 3.

To give notice to a defendant, or accused person, to appear, in order to make his defence. *Cod.* 9. 40.

ANNOTATIO, Adnotatio. Lat. [from *annotare*, q. v.] In the civil law. The sign-manual of the emperor; a rescript of the emperor, signed with his own hand. See *Adnotatio.* It is distinguished both from a rescript and pragmatic sanction, in *Cod.* 4. 59. 1.

ANNOTATIONE PRINCIPIIS. See *Adnotatione principis.*

Annua nec debitum iudex non separat ipsum. A judge [or court] does not divide annuities nor debt. 8 *Co.* 52. 1 *Salk.* 36, 65. Debt and annuity cannot be divided or apportioned by a court. A maxim of the old law, expressed in a hexameter line. See 1 *Story's Eq. Jur.* § 480.

ANNUA PENSIONE. See *De annua pensione.*

ANNUAL RENT. In Scotch law. Interest of money. Before the reformation, it was not lawful to lend money at interest; and, to evade the law, moneyed persons purchased a yearly rent out of land. The profit of the money lent was thus denominated *annual rent*, and so the term *annual rent* came to be synonymous with interest. *Bell's Dict.*

ANNUATIM. L. Lat. Annually. *Reg. Jud.* Appendix, 9. *Ambl.* 131.

ANNUELL. In old Scotch law. A yearly rent, revenue or duty, paid at certain times. *Skene de Verb. Sign.*

ANNUELTE. L. Fr. Annuity; an annuity. *Yearb. H. 7 Edw. II.* 221.

ANNUITY. [L. Lat. *annuus redditus.*] A yearly payment of a certain sum of money, granted to another in fee, for life or years, charging the person of the grantor only. *Co. Litt.* 144 b. 2 *Bl. Com.* 40. 3 *Kent's Com.* 460. In this respect it differs from a rent charge, which is chargeable upon, and issues out of land. 2 *Bl. Com.* 41. See *Com. Dig.* Annuity. *United States Digest*, Annuity.

The name of an action, now disused, (L. Lat. *breve de annuo redditu*), which lay for the recovery of an annuity. *Reg. Orig.* 158 b. *Bract.* fol. 203 b. 1 *Tidd's Pr.* 3. See *De annuo redditu.*

In a general sense, a yearly or stated payment of money. See *infra.*

* * An annuity, it is said, has been frequently confounded with a rent charge, from which it is a very distinct thing. 2 *Bl. Com.* 40. In point of fact, the term *rent*, (L. Fr. *rente*, L. Lat. *redditus*), was originally employed to denote both; a rent proper, or rent charge, being called *rent* from a *tenement*, (*redditus proveniens ex tenemento*), and an annuity, *rent* from the *coffer*, (*rente de chambre, redditus proveniens ex camera*); the term *rent* itself being used in the general sense of a payment or return of any kind, like the Lat. *pensio* and Fr. *pensione*, (qq. v.) *Britt. c.* 68, fol. 164 b. *Bract.* fol. 203 b. *Fleta*, lib. 2,

c. 62, § 15. *Reg. Orig.* 158 b. regula. 2 *Reeves' Hist. Eng. Law*, 258. See *Rent, Camera*. The adoption of the term *annuity* would have sufficiently expressed the distinction between these two kinds of *rents* or payments, had it not been for the phrase *annuus redditus*, by which it continued to be expressed in Latin. This is constantly translated in the old books, (as by Fitzherbert from the Register,) an *annual* or yearly *rent*, which probably led to the confusion spoken of by Blackstone. *F. N. B.* 152, A. B. See *Dyer*, 55 b. *Cro. Car.* 170. Lord Coke, in his definition of annuity, (*supra*), very properly gives to *redditus* its general sense of payment. See *Annuus redditus*.

In modern law, the distinction between the terms *rent* and *annuity* appears to be well settled. The anomalous character of an annuity itself, however, has sometimes led to confusion. Though not belonging to the class of *things real*, a man may have an estate of inheritance in it, that is, it may be made descendible to his heirs. 2 *Steph. Com.* 26. An annuity in fee is personal estate *sub modo*, and is sometimes called a personal fee. 3 *Ken's Com.* 460, and note.

ANNULUS. Lat. In old English law. A ring; the ring of a door. *Per haspam vel annulum hostii exterioris*; by the hasp or ring of the outer door. *Fleta*, lib. 3, c. 15, § 5.

ANNULUS ET BACULUS. L. Lat. In feudal and ecclesiastical law. Ring and staff. Symbols anciently used in feudal investitures; the ring being the symbol or earnest of faith, the staff, of aid or support, by which the vassal was bound to his lord; (*annulus arra fidei, baculus subsidii, quibus domino suo tenetur beneficiarius, seu vassalus*.) *Spelman*, voc. *Investire*. Hence was derived the practice of granting ecclesiastical investitures in England, *per annulum et baculum*, by ring and crozier, or pastoral staff. *Id. ibid.* 1 *Bl. Com.* 378, 379. A spear was sometimes used in giving investiture. *Feud. Lib.* 2, tit. 2.

ANNUS. Lat. In civil and old English law. A year; the period of three hundred and sixty-five days. *Dig.* 40. 7. 4. 5. *Calv. Lex. Bract.* fol. 359 b. *Annus est mora motus quo suum planeta pervolvat circulum*; a year is a period of motion in which a planet revolves through its circle or orbit. *Id. ibid.* The first edition of Bracton has *sumum* instead of

sumum, which it gives as another reading. The same author divides the year into various kinds, as *major, minor, solaris, lunaris, artificialis, naturalis* and *usualis*, (qq. v.) See *Year*.

ANNUS DELIBERANDI. Lat. In Scotch law. A year of deliberating; a year to deliberate. The year allowed by law to the heir to deliberate whether he will enter and represent his ancestor. It commences on the death of the ancestor, unless in the case of a posthumous heir, when the year runs from his birth. *Bell's Dict.* See *Jus deliberandi*.

ANNUS ET DIES. L. Lat. [L. Fr. *an et jour*.] A year and a day; a well known period of time in ancient and modern law. *Nos non tenebimus terras illorum qui convicti fuerunt de feloniam nisi per unum annum et unum diem, &c.*; we will not hold the lands of those who have been convicted of felony longer than for a year and a day. *Magna Charta*, 9 Hen. III. c. 22. *Co. Litt.* 254 b. Applied to claims of property in wreck, in villeins, and in the law of essoins. *Fleta*, lib. 1, c. 44. *Id.* lib. 2, c. 51, § 8. *Id.* lib. 6, c. 8, § 2. See *Year and day*.

* * * This peculiar limitation of time is supposed by Spelman to be of German origin, and is mentioned in the Books of Feuds, and in the laws of the Lombards. *Feud. Lib.* 2, tit. 40, 52, (3) 55, § 2. *LL. Longob.* lib. 2, tit. 43, l. 3. In an ancient formula given by Lindenbrog for the sale of a slave, the following clause occurs: *in omni corpore scimus eum annum usque anno et die*; we know (warrant) him to be sound in his whole body for a year and a day. *Formul. Lindenbrog*, 142. *Spelman*. The custom of warranting for a year and a day is still observed. See more under *Year and day*.

ANNUS, DIES ET VASTUM. L. Lat. In old English law. Year, day and waste. See *Year, day and waste*.

ANNUS LUCTUS. Lat. In the civil law. A, or the year of mourning. The year following a husband's death, during which his widow was required to remain unmarried. *Dig.* 3. 2. 1. *Cod.* 5. 9. 2. *Nov.* 22, c. 44, § 1. 1 *Bl. Com.* 457. See *Infra annum luctus*. Mr. Barrington refers to the Danish and Swedish laws, as containing a similar regulation. *Barr. Obs. Stat.* 8.

ANNUS UTILIS. Lat. In the civil law. An available year; a year composed

of *dies utiles*, (available days.) *Dig.* 4. 4. 19. *Id.* 15. 2. 2. *Id.* 47. 4. 11. *Id.* 4. 6. 6. *Brissonius*.

ANNUUS REDDITUS, or **REDITUS**. L. Lat. In old English law. An annuity; a yearly rent or payment. *Quæ ei a retro sunt de annuo redditu*; which are in arrear to him of an annuity. *Reg. Orig.* 158 b. *Fleta*, lib. 2, c. 62, §§ 14, 15. *De arrengiis cujusdam annui redditus*; of the arrears of a certain annuity. *Reg. Jud.* 43. See *De annuo redditu*.

ANON. **ANONYMOUS**. Without names; without the names of the parties. A term applied to reported cases in which the names of the parties are not given, or which are without the usual title.

ANOYER, *Ayer*, *Ennoyer*. L. Fr. To hurt; to trouble, offend or annoy. *L. Fr. Dict.* *Britt.* c. 61.

ANOYANCE, *Noysance*, *Anisancz*, *Aynians*. L. Fr. [from *anoyer*, or *anyer*, q. v.] Annoyance; nuisance. *Stat.* 22 *Hen.* VIII. c. 5. *Cowell.* *Kelham*. See *Nuisance*.

ANS, **ANZ**. L. Fr. Years. *Kelham.* *L. Fr. Dict.*

ANSEMENT. L. Fr. Likewise; in like manner; in the same manner. *Kelham*. See *Ensement*.

ANSWER. In pleading. In a general sense, any pleading, (except a demurrer, by which the party claims that he is not bound to answer,) framed to meet a previous pleading.

In equity pleading. The most usual form of defence made to a bill in equity; being the defendant's answer in detail, and usually under oath, to the charges which the complainant has made against him in his bill. 3 *Bl. Com.* 446. 4 *Steph. Com.* 22. *Mitford's Chanc. Pl.* 357, [306.] 2 *Daniel's Chanc. Pr.* 813. 1 *Barbour's Chanc. Pr.* 130.

ANTAPOCHA. Græco-Lat. [from *anti*, against, and *apocha*, q. v.] In the Roman law. A transcript or counterpart of the instrument called *apocha*, signed by the debtor and delivered to the creditor. *Calv. Lex. Cod.* 4. 21. 19. See *Apocha*.

ANTE. Lat. Before. Usually employed in old pleadings, as expressive of time, as *præ* (before) was of place, and *coram* (before) of person. *Towns. Pl.* 22.

ANTE EXHIBITIONEM BILLÆ. L. Lat. Before the exhibition of the bill. A phrase formerly used in pleading. See *Exhibitio billæ*.

ANTE LITEM MOTAM. L. Lat. Before controversy or dispute moved, or commenced. *Mascardus de Prob.* 420, n. 4, 5. *Hubback's Evid. of Succession*, 244, 245, 664. See *Lis mota*.

ANTECEDENS. Lat. [from *antecedere*, to go before.] Going before; antecedent.

Ad proximum antecedens fiat relatio, (q. v.) Relation or reference should be made to the last antecedent.

Ex antecedentibus et consequentibus fit optima interpretatio. 2 *Inst.* 317. The best interpretation [of a clause in an instrument] is made from the antecedents and the consequents [of such clause]; from the parts which precede and those which follow it; that is, by taking all the parts of the instrument together. The proper mode of construing an instrument is by looking at the whole, and not merely to particular parts.* 2 *Bl. Com.* 379. *Hob.* 275. *Broom's Max.* 249, [442.]

ANTECESSOR. Lat. [from *antecedere*, to go before.] In old English law. An ancestor; one who goes or has gone before another, in the possession of an estate; one who goes before an heir. Antecessores—*qui mortui sunt et hæredes antecedunt*, i. e. cedunt ante, et hæredes cedunt eis sub, quasi succedunt; ancestors—who are dead, and precede the heirs, i. e. they go before, and the heirs go after, or succeed them. *Bract.* fol. 67. See *Id.* fol. 281. *Assisa mortis antecessoris*; assise of mort d'ancestor, (q. v.) *Id.* lib. 4, tract. 3. See *Fleta*, lib. 5, c. 1. The word occurs in this sense in the Book of Feuds. *Lib.* 2, tit. 21.

A predecessor in an office. *Mem. in Scacc. M.* 5 *Edw.* I.

In the Roman law. A teacher, (*doctor*), master, (*magister*), or professor of law. *Calv. Lex.* A title given, in the prefaces to the Institutes and Digests, to Theophilus and Dorotheus, two of the most eminent of the compilers of the Digests; the former having also the title of *magister*, the latter that of *doctor*. *Inst. procem.* § 3. *Dig. pr.* § 11. *Id.* § 9. Dr. Taylor thinks the term was borrowed from the Roman militia. *Civ. Law*, 38.

A person learned in the law, though not a professor. *Hesychius.* *Brissonius.* *Calv. Lex.*

ANTE-FACTUM. Lat. [from *ante*, before, and *factum*, done.] In the Roman law. A thing done before; a previous act

or fact. *Aul. Gell. Noct. Att. lib. xvii. c. 7.* See *Ex post facto law*.

ANTEGESTUM. Lat. [from *ante*, before, and *gestum*, done.] In the Roman law. A thing done before; a previous act. *Dig. 38. 1. 40. Id. 48. 23. 3.*

ANTEJURAMENTUM. L. Lat. In Saxon law. A preliminary or preparatory oath, (called also *præjuramentum*, and *juramentum calumniæ*, q. v.) which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal, that he was innocent of the crime with which he was charged. *Whishaw. Leg. Athelstan, apud Lambard, cited ibid.*

ANTENATI. L. Lat. [plur. of *antenatus*; q. v.] Born before; persons born before; that is, before a particular period or event. This term, with its opposite or correlative, *postnati*, is used both in English and American law. See *Postnati*.

ANTENATUS. L. Lat. [from *ante*, before, and *natus*, born.] Born before; that is, before another person. In this sense, this term is of frequent occurrence in Bracton, being used with its correlative *postnatus*, (after-born), to distinguish sons or brothers born at different periods. *Si frater antenatus, [donationem fecerit] fratri suo postnato*; if an elder brother make a gift to his after-born brother. *Bract. fol. 33, lib. 2, c. 15.* See *Id. cc. 16, 30.*

Born before a particular period or event. In this sense, the term (especially the plural *antenati*;) has acquired much celebrity in modern law, being employed to denote the subjects of Scotland *born before* the union of the crowns; and Americans and British subjects *born* in the United States *before* the declaration of independence. *7 Co. 1, Calvin's case. 2 Kent's Com. 40, 56, 58. 4 Cranch's R. 321. 3 Peters' R. 99.*

ANTESTARI. Lat. In the Roman law. To summon a person to testify; to testify. *Calv. Lex. Brissonius.*

ANTICHRESIS. Græco-Lat. [Gr. *ἀντιχρῆσις*; from *ἀντι*, opposite, and *χρῆσις*, use.] In the civil law. A sort of mortgage, in which the right of reaping the fruits, or taking the profits of the thing pledged, was by special agreement transferred to the mortgagee, in lieu of drawing interest; [he having the use by way of compensation.] *Dig. 20. 1. 11. 1. Id. 13. 7. 33. 1 Mack-*

eld. Civ. Law, 383, § 348. 4 Kent's Com. 137, note. Story on Bailments, § 344. So called, as being an exchange of uses, or what Grotius terms *usus rei pro usu rei*; the use of one thing for the use of another; the use of the thing pledged, as a compensation for the use of the money borrowed. *Grot. de Jur. Bell. lib. 2, c. 12, § 3, par. 4. Id. § 20, par. 2.*

This kind of mortgage is still in use in some countries, where the civil law prevails; and it is expressly recognised by the laws of the State of Louisiana, but in general it has become obsolete. *Story, Bailm. ub. sup. Civil Code of Louisiana, art. 3143. 11 Peters' R. 351.* The modern Welsh mortgage closely resembles it. See *Welsh mortgage*.

ANTICIPATIO. Lat. [from *ante*, before, and *capere*, to take.] In the civil law. Anticipation; a taking or assuming beforehand; the taking of a thing to be true, before it is absolutely proved. *Huberus Præl. Jur. Civ. lib. 22, tit. 3, n. 14.* See *Præsumptio*.

ANTIGRAPHUS. Græco-Lat. [from Gr. *ἀντι*, against, and *γράφειν*, to write.] In the Roman law. An officer whose duty it was to keep an eye over the money which the tax-gatherers collected for the use of the state, (*cui id muneris injunctum erat, ut observet pecuniam quam in usum principis vel civitatis collegerunt exactores.*) *Budæus, in Annot. prio. in Pand. tit. De Quæstoris officio.* Literally, one who controlled or supervised the accounts of money collected; a controller. See *Controller*.

ANTINOMIA. Græco-Lat. [Gr. *ἀντινομία*, from *ἀντι*, opposite, and *νομος*, law.] In the Roman law. An opposition, contradiction or inconsistency of laws; inconsistency between one law and another in the same collection. *Cod. 1. 17. 8. Grotius de Jur. Bell. lib. 2, c. 16, §§ 4, 28.* Sometimes Englished "antinomy." "The antinomies or contradictions of the Code and Pandects still exercise the patience and subtlety of modern civilians." *3 Gibbon's Rom. Emp. 165, (Am. ed.)*

Antinomia. Conflicting laws or provisions of law; conflicting or inconsistent cases, opinions or decisions. "Cases judged to the contrary; cases of contradiction." *Bacon's Works, iv. 371.*

ANTIQUA STATUTA. Lat. Ancient statutes. See *Vetera statuta*.

ANTIQUÆ CUSTUMÆ. L. Lat. In old English law. Ancient customs. *Cus-*

toms upon wools, woolfells and leather, granted to Edward I. by parliament in the third year of his reign. *Vaugh.* 161, 162. See *Custumæ antiqua*.

ANTIQUARE. Lat. [from *antiquus*, ancient, old.] In the Roman law. To restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter A, the initial of *Antiquo*, I am for the old law. *Calv. Lex.*

ANTIQUITAS. Lat. [from *antiquus*, ancient.] In the civil law. Ancient or former law, or practice. *Inst.* 1. 6. 7. *Modus alius antiquitati placuit, alium novitas per usum amplexa est*; the ancient law adopted one mode, modern practice has established another. *Id.* 4. 11. pr. *Antiquitas dubitabat*, &c. *Cod.* 3. 33. 14. Literally, *antiquity*; which is the term constantly used by Lord Coke and other writers, to denote the same thing.

ANTIQUUM DOMINICUM. L. Lat. In old English law. Ancient demesne, (q. v.) *Fleta*, lib. 2, c. 71, § 15. Contrasted with *novum perquisitum*, (new purchase or acquiescent.) *Id. ibid.*

ANTISTES. Lat. In the civil law. A chief or presiding priest; a bishop, (*episcopus*.) *Inst.* 1. 20. 5. *Cod.* 1. 3. 18, 22, 25.

ANTISTITIUM. L. Lat. In old English law. A monastery. *Blount. Whishaw.*

ANTITHETARIUS. L. Lat. [from Gr. *antithesis*, opposition.] A term applied, in ancient law, to one who endeavored to discharge himself of a fact of which he was accused, by recriminating, or charging his accuser with the same fact. *Cowell. Whishaw.*

ANTOR. L. Fr. Around. *Kelham.* See *Entour*.

ANTRUSTIO, Amtrustio. L. Lat. [from Sax. *an*, one, or Germ. *ampt*, office, and *trusty*.] In early feudal law. A confidential vassal. A term applied to the followers or dependents of the ancient German chiefs, and of the kings and counts of the Franks. It occurs in the formularies of Marculf, and imported the same with what was called in the Salic laws, *homo in truste dominica*, (a man in his lord's trust, or one who had sworn faith to his lord.) *Marculf. Form.* lib. 1, c. 18. *L. Salic.* tit. 43, § 4. *Spelman*, voc. *Amtrustio*. *Esprit des Lois*, liv. 30, c. 16. 1 *Robertson's Charles V.* Appendix, note viii.

ANUELS LIVRES. L. Fr. The year books. *Kelham.* *L. Fr. Dict.* See *Year Books*.

ANUYTE, Anute. L. Fr. Annuity. 2 *And.* 1, 2.

ANY. A common word in statutes and other writings, having sometimes the sense of "some," but more frequently that of "all" or "every." See *At any time*. Like the word "all" (q. v.) it has often been made the subject of judicial construction, and, like that word, its meaning has been restrained and limited, as in the following examples:

"Any court of record," has, in England, been confined to the four courts at Westminster. 6 *Co.* 19.

"Any person or persons," in the Act of Congress of April 30th, 1790, § 8, though admitted to be broad enough to comprehend every human being, was held to be limited to the objects to which the legislature intended to apply the words. *Marshall, C. J. 3 Wheaton's R.* 631.

"Any creditor," in a deed, has been held to be used in a limited sense. 5 *B. & Ald.* 869.

"Any other matter or thing, from the beginning of the world to the day of the date hereof," in a release, has been restrained to the subject-matter on which the parties acted. 4 *Mason's R.* 227.

AORE. L. Fr. Now. *L. Fr. Dict.* See *Ore*.

AOUR. L. Fr. Gold. *Kelham.* See *Oor*.

APANAGE, Appanage, Apenage. [L. Lat. *appanagium, appenagium*, q. v.] In old French law. A provision for the support of younger sons; an allowance made to younger branches of a sovereign house, out of the revenues of the country, generally together with a grant of public domains; the provision of lands or feudal superiorities formerly assigned by the kings of France for the maintenance of their younger sons. *Spelman*, voc. *Appenagium*. *Brande. P. Cyclopaedia*.

APARELLE, Aparaille, Appareillie. L. Fr. Ready. *Kelham.*

APARES. L. Lat. Peers; equals. See *Appares*.

APARLUY, Aperluy. L. Fr. By itself; separately. *Yearb. H. 9 Hen. VI.* 21.

APARTE. L. Fr. Open; full. *Kelham.* See *Apert*.

APARTEMENT. L. Fr. Openly; plainly. *Kelham.* See *Aperiment*.

APARTMENT. A room in a house or building; a part of a house. *Apartments* are one or more rooms in a house, occupied by one or more persons, distinct from other occupants of the same house. See 7 *Man. & Gr.* 95. A small building on the same lot with a dwelling-house, at the distance of forty-five rods from it, with a passage way between them, was held to be not an apartment or dependence of the dwelling-house. 10 *Pick. R.* 293.

ΑΠΑΤΡΕΣ, Απάτροες. Gr. [from *α*, without, and *πατήρ*, a father.] In the civil law. Persons without a father; spurious children; bastards, (*quasi sine patre filii*.) *Inst.* 1. 10. 12.

APENT. L. Fr. Belongs. *Kelham.* See *Appent*.

APERCEYVER. L. Fr. To perceive. *Britt. c.* 40.

APERLUY. L. Fr. By itself; separately. *Chescun aperluy.* P. 9 *Edw.* III. 1.

APERTE, Aparte. L. Fr. [from Lat. *apertus*, q. v.] Open; plain. *Kelham.*

APERTEMENT, Aperment, Apartement. L. Fr. Openly; plainly. *Apertmentescrises*; openly defamed. *Stat. Westm.* 1, c. 15.

APERTUS, Apertum. Lat. [from *aperire*, to open.] In old English law. Open or patent. Applied by Bracton to writs, though *patens* was the more usual epithet. *Si fuerit [breve] patens sive apertum; quia originalium [brevium] quedam aperta, quedam clausa*; if the writ be patent or open; because of original writs some are open, some close. *Bract. fol.* 413 b. See *Fleta*, lib. 2, c. 13, § 6.

APEYNE. L. Fr. Scarce. *Kelham.*

APEX JURIS. L. Lat. An extreme point or subtlety of law; a curious or nice exception or merely technical objection in pleading; a rule or doctrine of law, carried to an extreme either of rigor or refinement; an unnecessarily rigid adherence to the letter; the *strictum* or *summum jus*. Lee, C. J. 1 *Burr.* 341, 349. Lord Ellenborough, C. J. 14 *Eas.* 522. Kent, C. J. 2 *Caines' R.* 117. Story, J. 2 *Story's R.* 143.

The figurative term *apex*, signifying literally, the summit or highest point of any peaked object, very aptly expresses the several ideas of extremity, sharpness and fineness, intended to be conveyed by these words. It is not well translated by the simple English word "point," which is constantly applied to positions and rules, not

at all coming within the denomination of "subtleties."

APICES JURIS. Lat. [plur. of *apex juris*, q. v.] Subtleties or extreme points of law; nice or curious exceptions, or merely technical objections in pleading. A term taken from the Digests. *De bona fide enim agitur, cui non congruit de apicibus juris disputare*; for the controversy is respecting the good faith of the transaction, which is inconsistent with any discussion about *apices juris*. *Dig.* 17. 1. 29. 4. In 4 *Scott, N. R.* 667, and 5 *Id.* 896, an objection is described as being *inter extremos apices juris*. The *apices juris* are said to stand upon the outer verge of the law, and are only rarely resorted to.

Apices juris non sunt jura [jus.] Extremities, or mere niceties of law, are not rules of law, [are not law.] *Co. Litt.* 804 b. 10 *Co.* 126. *Wingate's Max.* 19, max. 14. *Broom's Max.* 88, [142.] *Platt, J.* 20 *Johns. R.* 261. This maxim, however, is not understood as prohibiting the allowance of all technical objections. *Broom's Max. ub. supra.*

The common translation of this maxim,—"points of law are not laws"—is very far from expressing its proper meaning.

APICES LITIGANDI. L. Lat. Subtleties of litigation; sharp technical points or captious objections in pleading or practice. "It is unconscionable in a defendant to take advantage of the *apices litigandi*, to turn a plaintiff round and make him pay costs when his demand is just." Lord Mansfield, C. J. 3 *Burr.* 1248.

APENNIS, Appennis. L. Lat. In old European law. A brief statement or narrative in writing of any event or transaction, (*chartula relationis*.) *Formul. Vett. Marculfo* adject. et cap. 46. *Formul. Lindenbrog.* 109. *Spelman.*

APERIRE. Lat. In the civil law. To open, as a will or codicil. *Dig.* 29. 5, 3. 19, et seq. To open, as a way or road, (*via*.) *Id.* 43. 11. 1.

In feudal law. To escheat, or revert to the lord. *Feud. Lib.* 1, tit. 18, lib. 2, tit. 34, 35.

ΑΦΑΙΡ, Αφαίρε. Gr. [from *αφαιρ*, from, and *αἰς*, age.] In the Roman law. A minor; one under age. *Dig.* 27. 1. 10. 7. *Id.* 26. 5. 21. *Id.* 26. 6. 2.

APOCÆ ONERATORÆ. L. Lat. In old commercial law. Bills of lading. *Casa-regis*, disc. 1, n. 111. *Id.* disc. 10, n. 25. *Id.* disc. 25, n. 5. See *Apocha*.

APOCHA. Græco-Lat. [Gr. ἀποχῆ.] In the civil law. An acknowledgment of the payment of money, (*pecuniæ solutæ professio*.) given by a creditor to his debtor. *Brissonius*. An acquittance or discharge; a receipt or voucher, (Gr. ἀπόδειξις.) *Calv. Lex. Cod.* 4. 21. 16. 2. *Id.* 4. 21. 19. *Id.* 10. 22.

APOCRISIARIUS. Lat. [from Gr. ἀποκρισις, an answer.] In ecclesiastical law. One who answers for another, (*qui est à responsis, responsalis*.) Originally and properly, an officer who brought ecclesiastical matters before the emperor, and conveyed his answers to the petitioners; or an officer who, being consulted on ecclesiastical matters, gave answers or advice. *Spelman*.

A pope's legate; a bishop's legate or chancellor. *Id. Nov.* 6, c. 2. *Nov.* 123, c. 25.

APOGRAPHA. Græco-Lat. [Gr. ἀπογραφή.] In the civil law. A description or enumeration; an inventory, (*inventarium, repertorium*.) *Calv. Lex. Nov.* 48, c. 1.

APORIARE. Græco-Lat. [from Gr. ἀπορεῖν, to be in doubt or perplexity.] In old records. To be in difficulties; to be poor; to reduce to poverty. *Spelman*.

APOI, Apoy. L. Fr. Almost; scarcely. *Kelham*.

APOINCTER. L. Fr. To appoint or direct. *Kelham*.

APOSTACY. In English law. The total renunciation of Christianity, by embracing either a false religion, or no religion at all. This offence can only take place in such as have once professed the Christian religion. 4 *Bl. Com.* 43. 4 *Steph. Com.* 231.

APOSTARE. L. Lat. In Saxon law. To violate or transgress. *Qui leges apostabit*; whoever shall violate the laws. *LL. Edw. Conf.* c. 35. *Spelman*. Sometimes confounded with *apostatatare*, to apostatize. *Id.* See *Laghsleit*.

APOSTATA. Lat. [Gr. ἀποστάτης.] In civil and old English law. An apostate; a deserter from the faith; one who has renounced the Christian faith. *Cod.* 1. 7. *Reg. Orig.* 71 b.

APOSTATA CAPIENDO. See *De apostata capiendo*.

APOSTILER. L. Fr. To write notes on. *Kelham*. See *Apostille*.

APOSTILLE, Appostille. L. Fr. An addition, note or observation. *Kelham*.

Apostill, appostill, and apostyle are used in old English writers in the sense of a

marginal note, an answer to a petition or other writing, set down in the margin; and have been derived from the Lat. *apponere*, because placed to the text in the margin. *Richardson's Dict.* But *quære* if the word be not radically the same with *apostiles*. See *infra*. See an example of a paper with *apostyles* in the margin. *Bacon's Works*, vi. 97.

Appostille, (q. v.) is still used in French law. *Postile* occurs in *Bacon's Works*, vi. 101.

APOSTLES. [Græco-Lat. *apostoli*, q. v.] In civil and admiralty law. Letters dismissory, addressed by a court from which an appeal is taken, to the superior court, for the purpose of certifying the appeal. *Spelman*, voc. *Apostoli*. Short letters dismissory, signed by the judge *à quo*, stating shortly the case and the sentence, and, in the room of further apostles, declaring he will transmit all the proceedings. 2 *Bro. Civ. Law* 438, ch. 9. Letters missive, transmitted to the judge *ad quem*, to instruct him in the nature of the suit. *Halifax, Anal.* b. 3, c. 11, n. 34. See *Apostoli*.

This term is still sometimes applied in the admiralty courts of the United States, to the papers sent up or transmitted on appeals.

APOSTOLI. Græco-Lat. [Gr. ἀπόστολος, from ἀποστέλλω, to send from.] In the civil law. Letters dismissory or missive. *Post appellationem interpositam litteræ dandæ sunt ab eo a quo appellatum est, ad eum qui de appellatione cogniturus est, quas litteras dimissorias sive apostolos appellant*; after an appeal is interposed, letters are to be given by him from whom the appeal is taken, to him who is to judge of the appeal, which they call letters dismissory, or *apostiles*. *Dig.* 49. 6. *Id.* 50. 16. 106. *Cod.* 7. 62. 6. See *Dimissoria litteræ*.

APOSTOLUS. Græco-Lat. [Gr. ἀπόστολος, one sent from another.] In old European law. A legate, ambassador or nuncio. *Spelman*.

At Athens, the commander or admiral of a fleet was called ἀπόστολος. *Id.*

APOTHECA. Græco-Lat. [Gr. ἀποθήκη.] In the civil law. A repository; a place of deposit, as of wine, oil, books, &c. *Calv. Lex. Brissonius*.

APOTHECARI. Lat. In old records. Stewards, (*ratiocinatores, procuratores*.) *Spelman*.

APPANAGIUM. L. Lat. [from *ad*, to,

and *panagium*, sustenance, from *panis*, bread.] In old French law. An appanage or apanage; a provision for the support of younger sons. See *Apanage*. Sometimes written *appenagium*, which Spelman approves.

APPARANCE. L. Fr. Appearance, *Yearb.* 8 Hen. VI. 16.

APPARATOR. L. Lat. [from *apparare*, to prepare, furnish or provide.] One who provides or furnishes. A sheriff was formerly styled in England *apparator comitatus*, as having charge of certain county arrangements and expenditures; and considerable yearly sums were sometimes allowed him in that capacity. *Cowell*. In the United States, sheriffs often act in a similar capacity.

APPARENS. Lat. [from *apparere*, to appear.] Apparent; appearing; that which appears, or is regularly before a court. *De non apparentibus et non existentibus eadem est ratio*. Respecting things which do not appear, and things which do not exist, the rule, reasoning, or mode of treatment is the same. 6 Co. v. Caudrey's case. Things which do not appear are treated in law the same as if they did not exist. *Broom's Max.* 70, [121.] Where the court cannot take judicial notice of a fact, it is the same as if the fact had not existed. *Bulwer, J. 1 Term R.* 404. Thus, on a writ of error, for error in law, the court will not look out of the record. *Steph. Pl.* 121. So, on a special verdict, they will neither assume a fact not stated therein, nor draw inferences of facts necessary for the determination of the case from other statements contained therein. 5 Co. v. 8 Cowen's R. 600, 682. 1 Caines' R. 60. 5 Hill's R. 634. 1 Archb. Pr. 215. 12 M. & W. 316. *Broom's Max. ub. sup.* See *Apparere*, *Appear*.

APPARENT. [from Lat. *apparens*, q. v.] Manifest; evident; proved. See *Apparens*.

APPARENT HEIR. In English law. One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 Bl. Com. 208. See *Heir*.

In Scotch law. One who is entitled to enter heir to a deceased ancestor, before actual entry. *Ersk. Inst.* b. 3, tit. 8, § 54. 1 Forbes' Inst. part 3, b. 2, ch. 3.

APPARENTIA. L. Lat. [from *apparere*, q. v.] In old practice. Appearance; an appearance. *Rast. Entr.* 347. See *Compurentia*.

APPARERE. Lat. In old English law. To appear; to be regularly before a court; as a fact, an instrument, or other thing of which they are requested to take notice. See *Constat*. *Quod non apparet non est*. That which does not appear, is not, [does not exist.] 2 Inst. 479. *Jenk. Cent.* 207. *Vaugh.* 169. See *Apparens*.

To be regularly before or in a court, as a defendant in an action. *Comparere* was the term more usually employed in this case.

APPARES, Apares. Lat. [*quasi adpares*, from *ad*, to, and *pares*, equals.] In canon law. Peers, or compeers, (*compares*;) equals; associates. *Spelman*.

APPARITIO. L. Lat. [from *apparere*, q. v.] In old practice. Appearance; an appearance. *Apparitis in judicio*; an appearance in court. *Bract.* fol. 344. *Post apparitionem*; after appearance. *Fleta*, lib. 6, c. 10, § 25.

APPARITOR. Lat. [from *apparere*, to appear, to be present.] In the civil law. An officer who waited upon a magistrate or superior officer, and executed his commands. *Calv. Lex. Cod.* 12. 53—57.

In ecclesiastical law. One who cites or summons to appear; a summoner; a messenger who cites offenders to appear in the spiritual court, and serves the process of the court. *Cowell*.

APPARLEMENT. L. Fr. [from *pareillement*, likewise, in like manner.] In old English law. Resemblance; likelihood; as apparlement of war. *Stat. 2 Ric.* II. st. 1, c. 6. *Cowell*.

APPAROIR, Apparoer, Apparoier. L. Fr. To appear; to make known. *Kelham*.

APPARURA. L. Lat. [from *apparare*, to furnish.] In old English law. Furniture; tackle, or apparel. *Carucarum apparura*; plough tackle. *Cowell*.

APPATISSIEZ LIEUX. L. Fr. In old English law. Places which agreed to pay a sum of money to the enemy, in compensation of their towns being spared from the ravages of war. *Kelham*.

APPAYE, Appay, Apay. L. Fr. Satisfied; contented. *Kelham*.

APPEAL. [Lat. *appellatio*, from *appellare*, Fr. *appeller*; to call to, or upon.] In practice. The complaint to a superior court, of an injustice done, or error committed by an inferior one, whose judgment or decision the court above is called upon to correct, or reverse. The removal of a cause, or of some proceeding in a cause, from an inferior to a superior court, for the purpose

of re-examination or review.* 4 *Bl. Com.* 312. Story, J. 1 *Gallison's R.* 12, 13.

An appeal, in the most general sense, embraces the proceedings by writ of error and certiorari, but, strictly and practically, it is distinct from both. 3 *Bl. Com.* 55, 454. See *Certiorari*, *Writ of error*. In its technical sense, it is peculiar to courts of equity, and other courts which proceed according to the course of the civil law; the judgments of courts of common law being removed by writ of error. An appeal removes a cause entirely, subjecting the fact as well as the law to a review and re-trial; a writ of error removes nothing for re-examination but the law. Story, J. 1 *Gallison's R.* 12, 13. Story on the Constitution, § 1762. *Id.* (Abr.) § 917. See *Federalist*, No. 81. *United States Digest*, Appeal. The word itself comes from the civil law. See *Appellatio*.

APPEAL. [Fr. *appel*.] In old French law. A mode of proceeding in the lords' courts, where a party was dissatisfied with the judgment of the peers; which was by accusing them of having given a false or malicious judgment, and offering to make good the charge by the duel or combat. This was called the *appel of false judgment*. *Esprit des Loix*, liv. 28, c. 27.

APPEAL. [L. Lat. *appellum*; L. Fr. *appel*, from *appeller*, to call upon, or challenge.] In old English criminal law. A proceeding in the nature of a criminal prosecution, being an accusation by a private subject against another, for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. 4 *Bl. Com.* 312. In other words, it was a private process for the punishment of a public crime. *Id. ibid.* Bracton (fol. 146) calls it a criminal action, (*actio criminalis*), and Britton defines it to be "a complaint made by a man against another, with the purpose of attainting him of felony, by words ordained for that purpose;" (*pleynte de home faite sur autre, ovesque purpos de luy atteindre de felonie, par motz a ceo ordines*.) *Britt.* c. 22. *Co. Litt.* 123 b.

An appeal was a vindictive action at the suit of the party injured by some heinous offence, in which the appellant, instead of merely seeking pecuniary compensation, as in civil actions, demanded the punishment of the criminal. *P. Cyclopaedia*. Appeals were of various kinds; as appeals of murder, robbery, rape, arson

and maihem, and were in general triable by battel. *Bract.* lib. 3, tr. 2, cc. 19—30. *Britt.* c. 22. *Fleta*, lib. 3, c. 31. *Co. Litt.* 287 b. 4 *Bl. Com.* 314. 2 *Wooddes. Lect.* 337. *Barringt. Obs. Stat.* 27. They were abolished in England by statute 59 Geo. III. c. 46. Lord Holt once said he esteemed an appeal a noble remedy, and a badge of the rights and liberties of an Englishman. *Rex v. Toler*, 1 *Ld. Raym.* 555, 557. For the proceedings on an appeal of murder, see *Bigby v. Kennedy*, 2 *W. Bl.* 710. *S. C.* 5 *Burr.* 2463. The last appeal of this kind was *Ashford v. Thornton*, 1 *B. & Ald.* 405.

Appeal was also the name given to the proceeding in English law, where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed* or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case, he was called an *approver* or prover, and the party *appealed* or accused, the *appellee*. 4 *Bl. Com.* 330.

To **APPEAL.** [Lat. *appellare*; L. Fr. *appeller*.] In practice. To call upon a superior court to correct or reverse the judgment or decision of an inferior one; to remove a cause from an inferior to a superior court, for the purpose of re-examination or review. See *Appeal*, (in practice.)

In old criminal law. To accuse. To appeal a man is as much as to accuse him,—from *appeller*, to call, because *appellans vocat reum in iudicium*; the appellant calls the defendant to judgment. *Co. Litt.* 287 b.

APPEAR. In practice. To be properly before a court; as a fact or matter of which it can take notice. (L. Lat. *apparere, constare*.) To be in evidence; to be proved. "Making it *appear* and proving are the same thing." *Freem.* 53. See *Apparens*, *Apparere*.

To be regularly in court; as a defendant in an action. (Lat. *comparere*.) See *Appearance*.

APPEARANCE. [L. Lat. *comparentia, comparitio, apparentia, apparitio*.] In practice. The coming into court of either of the parties to an action. "Appearance is the parties coming into the court." *Finch, Law*, b. 4, c. 41.

The coming into court, of a defendant, or party proceeded against. The act or proceeding in an action, by which the defendant is brought, or places himself, before the court in which it is commenced, in order to

answer to the action. It is, in other words, the prescribed mode of complying with the exigency of the plaintiff's process; the defendant admitting, by his appearance, that he has had a general intimation of the suit, and is ready to receive a more particular statement of its ground and object. 3 *Steph. Com.* 564. Appearance is the first act of the defendant in court, and, until it is properly effected, no judgment can be awarded against him in any personal action. *Id. ibid.* 1 *Tidd's Pr.* 238.

In actions at law, an appearance is effected either by putting in sufficient bail, where the action requires bail; or, in non-bailable actions, by endorsing on the process served a memorandum authorizing the clerk to enter an appearance; or, in some cases, by filing common bail, or entering a common appearance. 1 *Tidd's Pr.* 238—240. *Archb. New Pr.* 71. A simple notice of appearance or retainer is also sometimes made equivalent to an appearance. 1 *Burr. Pr.* 112. A distinction, however, is made between an appearance and putting in bail, which is properly the act of the court itself. 1 *Tidd's Pr.* 238. In equity, an appearance is usually effected by the solicitor of the defendant filing with the clerk a memorandum requesting the entry of his appearance in the action. 1 *Daniel's Chanc. Pr.* 590. 1 *Barbour's Chanc. Pr.* 79. See *Bail, Common bail, Common appearance.*

APPEARAND HEIR. In Scotch law. An apparent heir. See *Apparent heir.*

APPEAUX, Apeaus. L. Fr. Appeals. *Kelham.* See *Appel.*

APPEL. L. Fr. [L. Lat. *appellum.*] In old English law. An appeal. *Britt. c.* 23. See *Appeal.*

In old French law. A challenge. *Esprit des Loix*, liv. 28, c. 27.

APPEL, Appele, Appelle. L. Fr. [from *appeller*, q. v.] Called. *Britt. c.* 71.

Appealed; accused. *Stat. Westm.* 1, c. 14. *Appelles de la force.* *Britt. c.* 23.

APPELLANS. L. Lat. [from *appellare*, q. v.] An appellant; one who appeals or prosecutes an appeal; an accuser or challenger. *Bract.* fol. 137, 138.

APPELLANT. In practice. One who appeals; the party to an action by whom an appeal is made or taken; the opposite party being usually termed the *respondent*, and sometimes the *appellee*. *Cowell. Tomlins.*

APPELLARE. Lat. In the civil law.

To appeal from the sentence or decision of an inferior judge or court, to a superior, (*ab inferioris judicis sententia ad superiorem provocare.*) *Calv. Lex.* Literally, to call out, to call to, to call upon, [i. e. for relief;] which is the sense of the Latin equivalent *provocare*, and the Gr. *καλεῖσθαι*. *Appellare adversus sententiam*; to appeal against a sentence. *Dig.* 48. 3. 18. *De sententia judicis appellare.* *Cod.* 7. 16. 4. Story, J. 1 *Gallison's R.* 13. See *Appello, Appellatio.*

APPELLARE. L. Lat. In old practice. To appeal or accuse. A. appellat B. *de morte C. fratris sui*; A. appeals B. of the death of C. his brother. *Bract.* fol. 138. *Appellare de facto*; to appeal one of fact, that is, as principal. *Id. ibid.* *Appellare de fortia*; to appeal of force, that is, as an accessory. *Id. ibid.*

APPELLATE. In practice. Pertaining to appeals; having cognizance of appeals. See *Appellate court, Appellate jurisdiction.*

APPELLATE COURT. A court of appeal; a court having cognizance of appeals, or to which appeals are taken.

APPELLATE JURISDICTION. Jurisdiction by way of appeal; cognizance of appeals. *Const. U. S.* Art. 3, sec. 2. 1 *Kent's Com.* 316. The power of one tribunal to review the proceedings of another, either as to the law or fact, or both. *Federalist*, No. 81. An appellate jurisdiction necessarily implies that the subject-matter has been already instituted in, and acted upon by some other court, whose judgment or proceedings are to be revised. *Story on the Constitution*, § 1761. *Id.* (Abr.) § 916.

APPELLATIO. Lat. [from *appellare*, q. v.] In the civil law. An appeal from an inferior to a superior court or tribunal. *Dig.* 49. 1. *de appellationibus.* *Cod.* 7. 62. *Nov.* 23. The removal of a cause from the sentence of an inferior to a superior judge. Story, J. 1 *Gallison's R.* 13.

APPELLATIO. Lat. [from *appellare*, to call, to name.] An appellation; that by which a thing is called; a name or term. *Appellationes fundi, omne edificium et omnis ager continetur*; under the appellation "fundus" are included every building and every kind of land. 4 *Co.* 87. A quotation from *Dig.* 50. 16. 211.

APPELLATOR. Lat. [from *appellare*, to appeal.] In the civil law. An appealor or appellant; a party appealing. *Dig.* 49. 13.

APPELLATOR. L. Lat. [from *appellare*, (q. v.); L. Fr. *appellour*.] In old practice. An appellant, or accuser. *Bract.* fol. 141 b. *Stat. Westm.* 2, c. 12.

APPELLATUS. L. Lat. [from *appellare*, (q. v.); L. Fr. *appelle*.] In old practice. An appellee; one who is appealed, or against whom an appeal is made; the party accused by an appeal. *Glanv.* lib. 7, c. 9. *Bract.* fol. 138, 139. *Stat. Westm.* 2, c. 12. *Spelman*, voc. *Appellum*.

In the civil law, the term was applied to the judge *ad quem*, or to whom an appeal was taken. *Calv. Lex*.

APPELLE. L. Fr. In old practice. The party accused by the process of appeal. *Britt.* c. 23. See *Appeal*.

APPELLEE. [L. Fr. *appelle*, q. v.] In practice. The party against whom an appeal is made. More commonly termed the *respondent*; the party answering to, or opposing an appeal. See *Respondent*.

APPELLER, Appeler. L. Fr. In old practice. To call; to call or summon before a judge; to appeal or accuse. *L. Fr. Dict.* John, *que cy est, appelle Peres qui illonques est, de ceo, que, &c.*; John, who is here, appeals Peter who is there, of this, that, &c. *Britt.* c. 23.

APPELLO. Lat. In the civil law. I appeal. The form of making an appeal *apud acta.* *Dig.* 49. 1. 2.

APPELLOR. In old English law. A criminal who accuses his accomplices. *Blount.* See *Approver*.

APPELLOUR. L. Fr. In old practice. The party who brought an appeal; the plaintiff in an appeal. *Britt.* c. 22.

APPELLUM. L. Lat. [from L. Fr. *appel*, q. v.] In old practice. An appeal. *Magna Charta*, 9 Hen. III. c. 34. *Spelman.* *Fiat appellum per verba appellum facientia*; the appeal must be made by words of appeal. *Bract.* fol. 140. See *Appeal*.

APPENDANT. L. Fr. and Eng. [from Fr. *appender*, to hang to; to belong or be annexed to; Lat. *appendens, adjunctum, accessorium*.] In the law of estates. Annexed or appended to, as a right of common to a freehold, or one inheritance to another that is superior or more worthy. *Co. Litt.* 121 b. 2 *Bl. Com.* 33. 3 *Kent's Com.* 404. This word is sometimes confounded with *appurtenant*, (*pertinens*, q. v.) 2 *Steph. Com.* 5. *Termes de la Ley.* The distinction between them is, that a thing *appendant* must always be by prescription,

but a thing *appurtenant* may be created at this day. *Co. Litt.* 121 b. (But see *Id.* 122 a.) 1 *Crabb's Real Prop.* 126, § 116. 3 *Kent's Com.* 404.

APPENDER. L. Fr. To hang to; to be annexed to; to belong to. *Append*; hanging; pending. *Kelham.* *Appenses*; hung, affixed. *Id.*

APPENDITIA. L. Lat. [from *appendere*, to hang to.] In old conveyancing. Appendages; appurtenances; the appendages or appurtenances to an estate, &c. *Kennett's Par. Ant.* 110. *Cowell.*

APPENNAGIUM. L. Lat. [from *appendere*, to belong to.] In French law. An appenage or appendage; the portion of a younger son, (*quasi appendagium junioris filii*.) *Spelman.* See *Apanage*.

APPENSER. L. Fr. To think; to consider. *Kelham.*

APPENSURA. L. Lat. [from *appendere*, to weigh out.] In old law. Payment of money at the scale, or by weight. *Cowell.*

APPENT, Apent, Appente, Appient. L. Fr. [from *appender*, to belong to.] Belongs; it belongs. *Appent al visconte receyver plegges*; it belongs to the sheriff to take pledges. *Britt.* c. 45. *Que appent a son office*; which belongs to his office. *Stat. Westm.* 1, c. 24.

APPERANCE. L. Fr. Appearance. *Yearb.* M. 8 Hen. VI. 16.

APPERAND. O. Sc. Appearing; apparent. 1 *Pitc. Crim. Trials*, part 1, p. 94.

APPERT. L. Fr. Openly; in public. *Kelham.*

APPERTAINING. [Lat. *pertinens*.] Belonging to; appurtenant. *Vaugh.* 109. See *Appurtenant*.

Usually occupied with, or lying to; as land with, or to a messuage. *Plowd.* 170, 171.

APPERTINANCES. An old form of *appurtenances*, (q. v.) *Cowell.*

APPESER. L. Fr. To agree. *Kelham.*

APPLICARE. Lat. [from *ad*, to, and *plicare*, to fold.] In old English law. To fasten to; to moor (a vessel). Anciently rendered, "to apply." *Hale de Jure Maris*, pars 2, (de port. maris,) c. 3. *Applicare et exonerare*; to moor and unload. *M.* 3 & 4 *Edw.* I. cor. Rege, rot 16, Devon. cited *ibid.* *Portus maris in quibus applicant se naves vel batelli*; sea-ports, where vessels moor. *Fleta*, lib. 2, c. 41, § 9.

This sense of the word seems to be de-

rived from the civil law. In the passage, *navem ad eas [ripas] appellere*, some copies have *applicare*. *Dig.* 1. 8. 5.

APPLICATIO. Lat. [from *applicare*, q. v.] In old English law. A fastening to; a mooring. *Applicatio navium. Hale de Jur. Mar.* pars 2, c. 4.

APPLICATIO. Lat. Application. *Applicatio est vita regule.* Application is the life of a rule. 2 *Bulstr.* 79.

APPLICATION. [from Lat. *applicatio*, from *applicare*, q. v.] A putting to; a placing near or before; the putting of a request to or before the person of whom it is made; the act of making a request; a request in writing.

A putting to; a bringing together, in order to ascertain some relation or establish some connexion; as the application of a rule or principle to a case or fact.

A putting to some use; as the application of money to a particular purpose; disposition; appropriation. 7 *Johns. Ch.* 150.

APPLUMBATURA. *Aplumbatura.* Lat. In old English law. A soldering to, or together. *Bract.* fol. 9 b. *Fleta*, lib. 3, c. 2, § 12. In the Digests, the word used is *plumbatura*. *Dig.* 6. 1. 23. 5.

APPODIARE. L. Lat. In old records. To lean upon; (*incumbere, inclinare, inniti in rem aliquam.*) *Spelman.*

APPOINT. [L. Fr. *appointer*; L. Lat. *appointuare*.] In equity, and conveyancing. To direct, designate, or limit; to make or direct a new disposition of an estate already conveyed, by virtue of a power contained in such conveyance.* A term particularly applied to conveyances to uses, and signifying to create, raise or direct a use; to limit a new use; to substitute a new use in place of a former one; to declare the use upon an estate already legally created to serve it. 1 *Steph. Com.* 506, *et seq.* 4 *Kent's Com.* 330. 2 *Crabb's Real Prop.* 725, § 2027. See *Appointment, Use.*

APPOINTMENT. In equity, and conveyancing. A deed or instrument executed in pursuance of a power contained in some preceding deed, (called a power of appointment;) and which operates as a conveyance, by limiting a use, or by substituting a new use in place of a former one.* 1 *Steph. Com.* 506. 2 *Crabb's Real Prop.* 725, §§ 2027, 2028. 4 *Kent's Com.* 316. See *Power of appointment.*

An appointment may be made by deed or will, or simply by writing, where the

mode of executing the power is not defined. 3 *Kent's Com.* 330. 1 *Powell on Devises*, 65—71. It is not considered as an independent conveyance, but merely ancillary to the former deed; and the party in whose favor it is made, called the *appointee*, is considered, for most purposes, as deriving his title under the original conveyance, and to be in the same position as if that instrument had actually contained a limitation in his favor, to the extent of the estate appointed. 1 *Steph. Com.* 506, 507. See *Power.*

APPOINTOR. The person who appoints, or executes a power of appointment; as *appointee* is the person to whom, or in whose favor an appointment is made. 1 *Steph. Com.* 506, 507. 4 *Kent's Com.* 316. 2 *Crabb's Real Prop.* 725, § 2028, *et seq.*

APPO'IT. A contraction of *appointus*. 1 *Instr. Cler.* 9.

APPONERE. L. Lat. [from *ad*, to, and *ponere*, to put.] In old practice. To put, or set to. *Justitiarum apponant sigilla sua*; the justices shall affix their seals. *Stat. Westm.* 2, c. 31.

To put in, or set up. *Appono clameum meum*; I set up my claim. The form of words anciently used in making a claim on a fine of lands. *Bract.* fol. 436. *Fleta*, lib. 6, c. 53. 1 *Reeves' Hist. Eng. Law*, 477, 478.

To appoint. *Bract.* fol. 316.

To put, simply. *Apponas loco eorum*; you put in their place. *Reg. Jud.* 75. *Cro. Jac.* 162.

To lay out, or expend. *Reg. Jud.* Appendix, 27.

APPORT. L. Fr. In old English law Tax; tallage; tribute; imposition; payment; charge; expenses. *Kelham.*

APPORTIONAMENTUM. L. Lat. In old English law. Apportionment; an apportionment. *Blount.*

APPORTIONARE. *Apporconare.* L. Lat. In old English law. To apportion. *Towns. Pl.* 27. *Apportionata*; apportioned, assessed. *Reg. Orig.* 268.

APPORTIONMENT. [L. Lat. *apportionamentum*.] In the law of contracts. A dividing, or making into parts. *Co. Litt.* 147 b. A distribution according to a certain proportion.* The distribution of a claim or charge among persons having different interests or shares, in proportion to their interests or shares in the subject-matter to which it attaches. 1 *Story's Equity*

Jur. § 475 a, note. A term applied to rents, common, and other incorporeal hereditaments. See *infra*.

APPORTIONMENT OF RENT. The dividing of a rent into parts, consequent upon the division of the land out of which it issues, either by grant, devise, descent or recovery; the apportionment being made according to the number and proportion of the parties among whom the land is divided, and according to the value of the land.* *Termes de la Ley. Cowell. Brande.* Thus, where the owner of the reversion sells part of the demised premises, the rent shall be apportioned; the tenant paying part to the original owner, and the residue to the grantee, according to the proportion of their interests in the premises. 3 *Kent's Com.* 469, 470. 1 *Crabb's Real Prop.* 214, § 210. So, in the case of the division of lands by devise or descent. *Id. ibid.* 3 *Kent's Com.* 469, 471. So, where part of the land is recovered by a person having a title paramount to that of the lessor, the rent must be apportioned, and so much of it only shall be payable to the lessor, as corresponds with the value of what is still held by the tenant under him. 2 *Steph. Com.* 29. 1 *Crabb's Real Prop.* 215, § 210. Rent may also be directly apportioned, by granting part of it to one person, and part to another. 3 *Kent's Com.* 469. And it may be apportioned in respect to time. *Id.* 470. 1 *Hilliard's Real Prop.* 244. See 1 *Story's Equity Jur.* § 475, *et seq.* *Stat.* 4 & 5 *Will.* IV. c. 22.

APPORTIONMENT OF COMMON. The division of the right of common, consequent upon the division of the land to which it is incident.* Thus, if a man seised of forty acres of land, to which common of pasture is appurtenant, alienes five acres of it to another, the alienee will be entitled to common *pro tanto*, that is, for all his commonable cattle, *levant and couchant* on the five acres. 8 *Co.* 78 b. 4 *Id.* 37. 2 *Steph. Com.* 30. 3 *Kent's Com.* 405. 1 *Crabb's Real Prop.* 300, §§ 333, 334.

APPORTUM. L. Lat. [from Fr. *apport*, (q. v.) or Lat. *apportare*, to carry or bring to.] In old English law. Any thing brought or carried to another, as a profit or emolument; particularly for the support of a religious person, (*quicquid apportatur ad sustentationem illius qui ecclesiæ curam habet.*) *Ducange.* A corody or pension. *Cowell. Blount.*

Any thing carried out of a country. *Reg. Orig.* 193 b. The statute *De appor-tis religiosorum*, 35 Edw. I., prohibited religious houses from transmitting any thing whatever to their superiors beyond sea. *Barringt. Obs. Stat.* 190.

APPOSAL OF SHERIFFS. [from Fr. *apposer*, q. v.] In old practice. The charging of sheriffs with money received upon their account in the exchequer. *Stat.* 22 & 23 *Car.* II. *Cowell.*

APPOSE. In old English law. To interrogate or question. *Bacon's Works*, iii. 115.

APPOSER. L. Fr. To question; to adjust or settle. *Kelham. Britt.* c. 46, fol. 119 b.

APPOSER. In old practice. An officer in the English exchequer, whose business it was to examine the sheriff's estreats with the record, and to ask [appose] the sheriff what he could say to every particular sum therein: usually termed the *foreign apposer*, (q. v.) *Termes de la Ley.*

APPOSTILLE. In French law. An addition or annotation made in the margin of any writing. *Merlin, Repert.* See *Apostille.*

APPRAISE. [L. Lat. *appreciare*, from *ad*, to, and *pretium*, price or value.] In practice. To put, fix or set a price or value upon; to fix and state the true value of a thing, and, usually, in writing.

APPRAISEMENT. [L. Lat. *appreciatio*, q. v.] In practice. The putting a value upon; the act or process of fixing and stating the true value of a thing, or of property, by one or more persons appointed for the purpose. A process constantly in use for ascertaining the true value of the property of intestates and insolvent debtors. It is accompanied by an inventory, in which the articles examined are set down in detail, with their respective values affixed. 2 *N. Y. Rev. Stat.* [82].

APPRAISER. A person appointed by competent authority to ascertain and state the true value of property, submitted to his inspection, and who is usually sworn to perform such duty. 2 *N. Y. Rev. Stat.* [82].

APPRECIARE, Appretiare. L. Lat. In old English law. To appraise, or estimate. *Reg. Orig.* 152. *Bract.* fol. 73, 74.

APPRECIATIO, Apprecio. L. Lat. In old English law. Appraisement; an appraisement. *Bract.* fol. 72, 73. *Reg. Orig.* 150.

APPREHEND. [from Lat. *apprehen-*

dere, to take hold of. In practice. To take or take hold of; to take a person on criminal process.

APPREHENDERE. Lat. In the civil law. To take hold of; to take or seize a person. *Calv. Lex.*

APPREHENSIO. Lat. [from *apprehendere, to take hold of.*] In the civil and old English law. A taking hold of a person or thing; apprehension; the seizure or capture of a person. *Calv. Lex.*

One of the varieties or subordinate forms of *occupatio*, or the mode of acquiring title to things not belonging to any one, (*nullius in bonis.*) Fleta applies it to the finding of things on the sea-shore. *Fleta*, lib. 3, c. 2, § 5.

APPREHENSION. [Lat. *apprehensio*, from *apprehendere, to take hold of.*] In the civil law. A physical or corporal act, (*corpus*,) on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing, that he may subject it to his exclusive control; or by which he obtains the physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of judicial possession, and by which, when accompanied by intention, (*animus*,) possession is acquired. 1 *Kaufm. Mackeld. Civ. Law*, 247, 248, §§ 239, 240.

In practice. The taking of a person on criminal process. See *Apprehend.*

APPRENTICE. [L. Lat. *apprenticius*; L. Fr. *apprentise*; Fr. *apprenti*, from *apprendre, Lat. apprehendere, to take, to learn.*] One who learns; a learner. A species of servant, usually an infant, bound by indenture to serve another for a term of years, receiving in return for his services, *instruction* in his master's trade, art or occupation.* 1 *Bl. Com.* 426. 2 *Kent's Com.* 261. *United States Digest*, Apprentice. The word *apprentice* is said to have been first used in this sense in a charter of 12 Edward III. *Cowell.* But see *id. ibid.* 3 *Reeves' Hist. Eng. Law*, 223, 170.

By a provision of the statute 5 Eliz. c. 4, which remained in force until a recent period, it was, in general, required that every person exercising a trade in England should have previously served as apprentice to it for seven years; but by statute 54 Geo. III. c. 96, that provision was abolished, with a saving of the customs and by-laws of London, and other corporations; and by the municipal act,

5 & 6 Will. IV. c. 76, s. 14, all such restrictions established by custom or by law, in any of the boroughs to which that statute extends, are also done away. 2 *Steph. Com.* 271, 272.

APPRENTICESHIP. [L. Fr. *apprentissage.*] The state or condition of an apprentice.

The relation of one person to another, as an apprentice.

A contract by which a person is bound to serve another in his trade, art or occupation, on condition of being instructed in it; and which is evidenced by an instrument called an *indenture* or *indentures*. See *Indenture*.

The term for which an apprentice is bound to serve.

APPRENTICE OF (or IN) LAW. [L. Fr. *apprentice en la ley*; L. Lat. *apprenticius legis*, or *ad legem*.] A title formerly given, in England, to counsellors at law of a certain degree, corresponding with the modern *barrister*. *Un apprentice de la ley.* *Bendl.* pl. 9. "An apprentice of the Inner Temple." 3 *Leon.* 237. See *Apprenticius ad legem*.

APPRENTICIUS, Apprentitius. L. Lat. [from Fr. *apprendre, to learn.*] In old records. An apprentice. *Kennett's Par. Ant.* 449. *Cowell.* See *Apprentice*.

An apprentice at law. *In curia regis sunt servientes, narratores, attornati et apprenticii*; in the king's court, there are serjeants, countors, attorneys and apprentices. *Fleta*, lib. 2, c. 37.

APPRENTICIUS AD LEGEM. L. Lat. [L. Fr. *apprentice en la ley.*] In old English practice. An apprentice or student at law; a learner in the law; sometimes called *apprenticius legis*, (an apprentice or learner of the law), and *apprenticius ad barras*, (an apprentice at the bars or bar of the court); from which has been derived the modern term *barrister*. A title formerly given, in England, to counsellors below the degree of serjeant. *Spelman*, voc. *Apprenticii*. 3 *Bl. Com.* 27. *Fortescue de L. L. Ang.* c. 50. *Selden's notes, ibid.* 3. *Plowd.* 102 a, *et passim*. In the Year Book, P. 3 Hen. VI. 5, it is said of a cause in the King's Bench, *il fuit b'n debat' p' les serjats & les apprentic' al' barr'*, (it was well argued by the serjeants and the apprentices at the bar.) So, *Plowden* says of a cause reported by him: "It was argued this term by many apprentices, and by all the serjeants at the bar."

Plowd. 102 a. Barristers are styled in the old books *apprenticii ad legem*, (apprentices at law,) from their being considered as merely learners, and not qualified to execute the full office of an advocate till they were of sixteen years' standing, at which time they might be called to the degree of serjeant. 3 *Bl. Com.* 27.

* * The term *apprentice* appears to have been first used in the law; at least, the word does not occur in application to mechanic arts before the reign of Henry IV. (but see *Yearb. T.* 8 Edw. III. 26,) while *apprentices in law* are mentioned in an ordinance in the twentieth year of Edward I. 2 *Reeves' Hist. Eng. Law*, 284, 285. *Crabb's Hist. Eng. Law*, 191, 432, (Am. ed.) *Spelman*, voc. *Apprenticii*. The name of *apprentice in law* was given indiscriminately to all students, but those of the inns of court were distinguished by the epithet *nobiliores*, or *apprenticii ad barras*, because they were admitted to plead at the bars of all the courts, except the court of Common Pleas. *Crabb's Hist. Eng. Law*, 431. *Spelman*, *Fortescue*, *ubi sup.* *Plowden* and *Finch* both style themselves in their works, *apprentices of law*. After the word came to be applied to learners of the mechanic arts, it fell into disuse in law, and the term *barrister* took its place. *Crabb's Hist. ub. sup.* It is used, however, in the reports, as late as the eleventh year of Charles I. *Wilkinson v. Merryland*, *Cro. Car.* 449. Mr. Barrington is inclined to think that *apprentice* was a corruption of *appris*, or *appris en ley*, (learned in the law, an epithet by which a counsellor is still described in records.) *Barringt. Obs. Stat.* 311, 345, note [i]. Probably both terms were employed as designating the degrees of knowledge which the student successively attained, from *apprenti*, (a learner,) becoming *appris*, (learned); but *apprentice* was certainly the established professional title. Formerly the suitor, who was the *client* of the *serjeant*, was called the *master* of the *apprentice* of the court whom he employed, whether that apprentice was acting as his attorney, or as his counsel in courts in which serjeants did not usually attend. 6 *Man. & Gr.* 835, note, citing *Serviens ad legem*, 11, 45, 188. 8 *Reeves' Hist. Eng. Law*, 233. See *Attorney*, *Dominus*, *Master*.

APPRENTISE. L. Fr. Apprentice. *Kelham*.

APPRENTISSAGE. L. Fr. Apprenticeship or novitiate, (*tirocinium*.) *Spelman*. *Cowell*. The state of an apprentice, or the term for which he is bound.* *Apprentissage* is used by old English writers. *Richardson's Dict.*

APPRENTIZ. L. Fr. Apprentice. *Un apprentiz de la court le roy, et attourne*; an apprentice of the king's court and an attorney. *Kelham*.

APPRESTER. L. Fr. To prepare. *Apprest*; prepared, ready. L. Fr. *Dict.*

APPRESTES. L. Fr. Payments; loans. *Kelham*.

APPRIMES. L. Fr. First. *Kelham*. APPRIS, *Apprise*. (pl. *Apprises*.) L. Fr. [from *apprendre*, to learn.] In old English law. Learned or skilled. *Apprises en la ley*; learned in the law. *Litt. epilogus*. *Les lays gens que ne sont apprises en la ley*; the common people who are not learned in the law. *Litt. sect.* 331. See *Apris*.

APPRISING. In old Scotch law. A diligence or process for attaching a debtor's land and conveying it to the creditor, in payment of his debt. In lieu of this, the process of *adjudication* was introduced. *Bell's Dict.*

APPROACH, *Right of*. In international law. A term applied to the *right of visit* or visitation of vessels at sea, for the purpose of ascertaining their national character. 11 *Wheaton's R.* 1, 43. 1 *Kent's Com.* 153, note. See *Visit*, *Visitation*.

APPROBARE. L. Lat. In old English law. To approve. *Towns. Pl.* 52. See *Approve*.

APPROBATE AND REPROBATE. In Scotch law. To approve and reject; to take advantage of one part, and reject the rest. *Bell's Dict.* Equity suffers no person to *approve* and *reprobate* the same deed. 1 *Kames' Equity*, 317.

APPROBATOR. L. Lat. [from *approbare*, q. v.] In old English law. An approver. *Towns. Pl.* 52. See *Approver*, *Probator*.

APPROCHER, *Aprocher*. L. Fr. To come to; to come at; to approach. *Kelham*.

APPROPER. L. Fr. To appropriate. *Kelham*.

APPROPERMENT. L. Fr. Properly. *Kelham*.

APPROPRIATION. *Id.*

APPROPRIARE. L. Lat. [from *ad*, to, and *proprius*, one's own.] In old English

law. To take to one's own separate use; to appropriate; to approve. *Appropriare et includere* [communism]; to approve, or separate and enclose a common; to dis-common it. *Bract. fol. 228. Kennett's Par. Ant. 336.*

APPROPRIATION. In English ecclesiastical law. The perpetual annexing of a benefice to some spiritual corporation, either sole or aggregate, being the patron of the living. 1 *Bl. Com. 384. 3 Steph. Com. 70—75. 1 Crabb's Real Prop. 144, § 129. Termes de la Ley. Cowell.* Where the annexation is to the use of a lay person, it is usually called an *impropriation*. 1 *Crabb's Real Prop. 145, § 180.*

APPROPRIATION. In contracts. The application of a sum of money paid by a debtor to his creditor, to one or more of several debts due from the former to the latter. This may be made by the debtor himself; or, in case of his neglect, by the creditor; or, where neither has made it, by the law. See *Stone v. Seymour, 15 Wendell's R. 19*, for a full view of the doctrine. And see 4 *Mason's R. 383. 5 Id. 11, 82. 20 Pick. R. 446.*

APPROVE. [L. Lat. *appropriare, approbare*; L. Fr. *approver, approuver, appruer*.] In old English law. To take to one's own separate use, (*ad proprium*); as by enclosing land that was before common or waste. To enclose for the purpose of cultivation.* See *infra*.

To cultivate land after enclosing it.* To make the best benefit or profit of it, by increasing the rent. *Cowell.* In modern phrase, to *improve* land.

To *approve* common or waste land, is to enclose and convert it to the purposes of husbandry, which the owner might always do, provided he left common sufficient for such as were entitled to it. *Stat. Merton, c. 4. Stat. Westminster, 2, c. 46. 2 Bl. Com. 34. 3 Id. 240. 2 Steph. Com. 7. 3 Kent's Com. 406. See Appropriare, Approvement.*

APPROVE. [L. Lat. *approbare*.] In old criminal law. To accuse or prove; to accuse an accomplice by giving evidence against him. See *Approvement*.

"APPROVED AND ENDORSED NOTE." See 20 *Wendell's R. 431.*

APPROVEMENT. [L. Lat. *approvementum, appruamentum*.] In English law. Enclosure, the enclosing part of a common or waste ground, leaving sufficient common with egress and regress for the commoners.

2 *Bl. Com. 34. 3 Id. 240. 1 Crabb's Real Prop. 291, § 319. Id. 306, § 342. Cowell.*

Enclosure for the purpose of cultivation; cultivation or improvement. *Id.*

In old law. The profits of land. *Crompt. Jur. 152.*

APPROVEMENT. In English criminal law. A species of confession, which was when a person indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed* or accused others his accomplices in the same crime, in order to obtain his pardon. In such case he was called an *approver*, or *prover*, (*probator*), and the party appealed or accused, the *appellee*. 4 *Bl. Com. 330.* It was a species of appeal, and triable in some cases by battle. *Id. ibid. Cowell, voc. Approver.* See a description of the practice by Lord Mansfield, *Cowp. 335.* And see *Barringt. Obs. Stat. 180.*

With the discontinuance of appeals in England, this practice has become obsolete; the present practice being to permit the criminal who confesses his guilt to give evidence against his associates, thus making him what is called *queen's evidence*, and in the United States, *state's evidence*.* 4 *Bl. Com. 331. 4 Steph. Com. 398, 399. See Approver.*

APPROVEAMENTUM. L. Lat. In old English law. An approvement, or improvement. *Cowell, voc. Approvement.*

APPROVER. [L. Lat. *approbator, probator*.] In English criminal law. A person, who being indicted of treason or felony, upon his arraignment, before plea pleaded, and with a view of obtaining a pardon, confessed the crime charged in the indictment, and was thereupon admitted by the court to reveal on oath the accomplices of his guilt.* 4 *Bl. Com. 330.* The accusation made in such cases, together with the particulars of the disclosure, was called an *appeal*, and the parties accused, the *appellees*. *Id. ibid. Bract. fol. 152. Lord Mansfield, Cowp. 335. Barringt. Obs. Stat. 180. See Approvement, Appeal, Probator.*

APPROVER. [L. Lat. *appruator*.] In old English law. The bailiff of a lord in his franchise. *Stat. 9 Hen. VI. c. 10. Cowell.* The king's *approvers* were those that had the letting of the king's demesnes in small manors, to his best advantage. *Stat. 51 Hen. III. st. 5.* Sheriffs were sometimes called the king's *approvers*. *Stat. 1 Edw. III. c. 8. Cowell. Blount.*

The word was sometimes written *emprover*. *Blount*.

APPROVER. [L. Lat. *appruamentum*.] In English law. Approvement; improvement. "There can be no approver in derogation of a right of common of turbary." 1 *Taunt*. 435.

APPROVER. L. Fr. To approve or prove; to vouch. *Kelham*.

To appropriate. *Id*.

To improve. *Id*.

APPRUAMENTUM. L. Lat. [from *appruare*, q. v.] In old English law. Approvement; an approvement, or improvement. *Cowell*. *Salvis eidem R. appruamentis suis*; saving to the said R. his improvements. *Reg. Jud.* 8.

APPRUARE. L. Lat. [L. Fr. *appruer*, *approuer*.] In old English law. To approve or improve [land.] *Stat. Westm.* 2, c. 46. *Commodum suum facere et apruare*; to make his own profit and to approve. *Fleta*, lib. 4, c. 20, § 5. *Id*. lib. 2, c. 72, § 13. *Apruari*; to be approved. *Compastari, de ovili faldari, apruari, et emendari*. *Id*. lib. 2, c. 73, § 5.

To benefit, or obtain a benefit, by improvement. *Quantum dominus se apruare possit in eisdem boscis*. *Id*. c. 71, § 6.

APPRUATOR. L. Lat. [from *appruare*, q. v.] In old English law. An approver [of lands.] *Tanquam apruator et cultor optimus*; as the best approver and cultivator. *Fleta*, lib. 2, c. 76. *Pro discreto apruatore cognitus*. *Id*. c. 73.

APPULSUS. Lat. [from *appellere*, to drive to.] In the civil law. A driving to, as of cattle to water. *Dig.* 8. 3. 1. 1.

APPUNCTUARE. L. Lat. In old English law. To appoint. *Nominandi et appunctuandi*; of nominating and appointing. *Bunb.* 215.

APPURTENANCES, [anciently written *appurtinances*; from L. Fr. *apurtinances*, (q. v.) L. Lat. *appurtinentia, pertinentia*.] Things belonging, appertaining or appurtenant to another thing as principal, (as a right of way, or other easement, to land; a right of common to a pasture; out-houses, barns and orchards to a house or messuage); and which pass as incident to the principal thing; in Scotch law, *pertinents*.* The singular *appurtenance* is sometimes used. "An appurtenance is something annexed to another thing more worthy." *Story*, J. 1 *Sumner's R.* 492, 495.

Where a conveyance is made of a house

"with the *appurtenances*," the garden, curtilage and close adjoining to the house, and on which the house is built, will pass with it, as being included in the word *appurtenances*; but no other land will pass, although usually occupied with the house.* 2 *Saund.* 401, note (2). 1 *Steph. Com.* 449. 2 *Chitty's Bl. Com.* 17, note (3). *Hargr. Co. Litt.* note 21, lib. 1. As to a right of way passing by this word, see 4 *Ad. & Ell.* 749. 5 *B. & Ad.* 791. So, in the lease of a house, nothing will pass under the name of *appurtenances*, which has not been reputed or accepted as a parcel thereof. 2 *Crabb's Real Prop.* 246, 247, § 1299. As to water-rights and secondary easements, see *Angell on Water-Courses*, chap. 5, § 158 *et seq.* In a devise, the word *appurtenances* is construed to mean whatever is necessary to the commodious enjoyment of a thing; and by a devise of a messuage, without the words "with the *appurtenances*," the garden and curtilage will pass, and, where the intent is apparent, even other adjacent property. 2 *Powell on Devises*, 190. 2 *Saund.* 401, note (2). 1 *B. & C.* 350. 2 *Chitty's Bl. Com.* 17, note (3). *Id.* 19, note (7). See *Appurtenant*.

A ship's boat (Lat. *scapha*), is not considered as an appurtenance of the ship, and will not pass with the ship under the word *appurtenances*. *Dig.* 21. 2. 44. *Id.* 33. 7. 29. *Roccus de Navibus et Naulo*, not. 20. *Abbott on Shipping*, 5. 17 *Mass.* 405.

APPURTENANT. [L. Lat. *pertinens*.] Belonging to; accessory or incident to. This word answers to the *accessorium* of the civil law. 2 *Steph. Com.* 30, note. Land is not properly appurtenant to a house, but it may pass by such words in a deed by reputation, in common parlance, and by the intent of the parties. 2 *Crabb's Real Prop.* 247, § 1299. *Cro. El.* 918. 3 *Salk.* 40. 2 *Saund.* 401 a. 2 *Chitty's Bl. Com.* 19, note (7). Nor can land, strictly speaking, be appurtenant to land. But a thing, to be *appurtenant* to another, must be of a different and congruous nature, such as an easement or servitude, or some collateral incident belonging to, and for the benefit of the land. *Story*, J. 1 *Sumner's R.* 21, 37. *Plowd.* 170. *Co. Litt.* 121 b. *Thompson, J.* 10 *Peters' R.* 25, 54. 1 *Hilliard's Real Prop.* 340.

APRES, Aprée. L. Fr. After; afterwards. L. Fr. *Dict. En apres*; hereaf-

ter, moreover. *Id. Cy apres*; thereafter. *Id.*

Next; nearest to. *Kelham.*

APRIS. L. Fr. Learned. *J'ay appris par ley et pur un principe et maxime en nostre ley, que, &c.*: I have learned for [as] law, and for [as] a principle and maxim in our law, that, &c. *Yearb. M. 2 Hen. VI. 1. Apris de la leie*; learned or versed in the law. *Kelham.*

APUD. Lat. In the civil law. With. *Dig. 50. 16. 63. See Penes.*

Before. *Dig. 45. 1. 122. 5.*

In. *Dig. 16. 3. 5. 2.*

To. *Dig. 35. 2. 10. Id. 10. 2. 43.*

Among. *Apud acta*; among the acts. See *Apud acta.*

In old English law. At. *Apud turrin*; at the Tower. *Bract. fol. 380 b. Apud London, videlicet, in parochia beata Mariae de arcubus, in warda de Cheap*; at London, to wit, in the parish of St. Mary-lebow, in the ward of Cheap. *Towns. Pl. 166. 2 Ld. Raym. 1043.* The old form of laying a venue in London.

APUD ACTA. Lat. In the civil law. Among the acts or recorded proceedings; in the course of a judicial procedure; in the presence of a judge. *Dig. 2. 4. 17. Id. 50. 2. 7. 3. Cod. 2. 14. 28. Id. 7. 57. 4-7. Id. 7. 61. 1. Id. 9. 4. 2.* If a party desired to appeal *apud acta*, that is, in the presence of the judge, at the time of the sentence, or in the course of recording it, he might do so by simply saying, *Appello*; (I appeal). *Dig. 49. 1. 2. 2 Brown's Civ. Law, 436.*

This term has been retained in the modern civil law, and in Scotch and admiralty law. It is sometimes Englished, "in the book of acts," "among the acts of the court." *Clerke's Prax. Cur. Adm. tit. 7, 8.*

APUD PARES. L. Lat. By or before the peers. *Feud. Lib. 2, tit. 16.*

APRIL. L. Fr. April. *Kelham.*

APURTENANCES. L. Fr. Appurtenances. Used by Britton as another name for incorporeal things, (*chooses nent corporeles*), or rights in land. *Britt. c. 54.*

AQUA. Lat. [L. Fr. *eue, aue, aeue.*] In civil and old English law. Water. *Dig. 39. 3. Id. 43. 20. Cod. 3. 34. Flota, lib. 4, c. 28, §§ 4, 5.*

A stream of water; a water-course. *Flota, lib. 4, c. 28, § 5.*

Aqua pluvia; rain water, (*qua de celo cadit.*) *Dig. 39. 3. 1. pr.*

Aqua profuens; flowing or running water. *Dig. 1. 8. 2.*

Aqua quotidiana; daily water; water that might be drawn at all times of the year; (*qua quis quotidie possit uti, si velit.*) *Dig. 43. 20. 1. 2, 3, 4.*

Aqua aestiva; summer water; water that was used in summer only. *Dig. 43. 20. 1. 3, 4.*

Aqua fontanea; spring water. *Flota, lib. 4, c. 27, § 8.*

Aqua currens; running water. *Id. lib. 4, c. 6, § 3.*

Aqua dulcis or *frisca*; fresh water. *Reg. Orig. 97. Bract. fol. 117, 135.*

Aqua salsa; salt water. *Id. ibid.*

Aqua trestornata; (*eue tresturne*;) a stream turned out of its course. *Bract. fol. 115.*

Aqua cedit solo. Water belongs to, or goes with the land [which it covers.] *Ca. Litt. 4 a, b. 2 Bl. Com. 18. Hale de Jure Mar. pars 1, c. 1.*

Aqua currit et debet currere, ut currere solebat. Water runs, and ought to run as it has used to run. 3 *Bulstr. 339. Story, J. 3 Sumner's R. 189, 190. 3 Ken's Com. 439. Angell on Water-Courses, ch. 4, § 93.* A running stream should be left to flow in its natural channel, without alteration or diversion. A fundamental maxim in the law of water-courses. Woodward, J. 26 *Penn. St. R. 413.*

AQUA COOPERTA. L. Lat. Covered with water. 2 *P. Wms. 128.*

AQUÆ. Lat. In old English law. Waters. *Reg. Orig. 97. Streams. Stat. Westm. 2, c. 47. Aquarum cursus*; water-courses. *Towns. Pl. 20.*

AQUÆDUCTUS, Lat. [from *aqua*, water, and *ductus*, a leading; a duct or pipe.] In the civil law. The right of leading water through another's land, (*jus aquæ ducendæ per fundum alienum.*) *Inst. 2. 3. pr. Dig. 8. 3. pr. Cod. 11. 42.* Or, as Bracton more fully defines it, the right of leading water from another's land; and through another's land to one's own, for the purpose of irrigation, or other convenience; (*jus aquæ ducendæ ex fundo alieno et per fundum alienum usque ad fundum proprium, ad irrigandum agrum suum, vel ad aliud commodum faciendum.*) *Bract. fol. 231 b.* A species of rural servitude, the opposite of the *servitus aquæ educendæ*, which was the right of leading off the water from one's own on to another's ground. *Dig. 8. 3. 29.*

AQUÆ HAUSTUS. Lat. [from *aqua*, water, and *haustus*, a drawing.] In the civil law. The right of drawing water from another's spring or well. *Inst.* 2. 3. 2. *Dig.* 8. 3. 1. 1. *Bract.* fol. 231 b. 232.

AQUAGIUM. Lat. [quasi *aquæ agium*, i. e. *aquæ ductus*.] In old records. A duct or passage for water; a canal, ditch or trench for leading off water, especially from marshy grounds. *Spelman.* *Cowell.*

Aquagangium. The passage or flow of water, (Sax. *watergang*); a trench or drain to carry off water. The same nearly as *aquagium*. *Cowell*, voc. *Watergang*.

Aquagaugium. A water-gage. A mark placed on the banks of streams to show when the water rose to a certain point. *Spelman.*

AQUATIC RIGHTS. Rights to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers. *Schultes' Aquatic Rights*, per tot. 3 *Kent's Com.* 419, 427. See *Fishery*, *Alluvion*, *Avalsion*, *Dereliction*, *Filum aquæ*, *Riparian rights*.

AR. A contraction or abbreviation of *Armiger*, (esquire.) 1 *Instr. Cler.* 9.

ARA ETE. L. Fr. Shall have been. *Kelham.*

ARABANT. Lat. In old English law. They ploughed. *Arabant et herciabant ad curiam domini*; they ploughed and harrowed at the lord's court. A phrase of frequent occurrence in *Domesday Book*, signifying that the vassals to whom it was applied, were bound to plough and harrow the lands of the lord within his court, that is, within his manor. *Spelman.* See *Court*.

ARACE. L. Fr. To erase; to deface. *L. Fr. Dict.* *Kelham.*

ARACHER, Aracer. L. Fr. To root up; to grub or pull up by the roots. *Kelham.*

ARACINE. L. Fr. Rooted; taken root. *Arbres aracines.* *Britt.* c. 33.

ARÆR, Arair. L. Fr. To prepare; to array; to settle. *Kelham.*

ARAGE. In old Scotch law. An old form of the word *average*, (q. v.) *Skene de Verb. Signif.*

ARAGE. L. Fr. Mad; insane. *Arages*; madmen. *Kelham.* See *Arrage*.

ARAHUM. L. Lat. [from Sax. *ar*, *are*, honor, reverence.] In old European law. A consecrated place. *L. Ripuar.* tit. 32, § 8. *Spelman.*

ARALIA. L. Lat. [from *arare*, to

plough.] In old English law. Arable grounds; lands devoted to tillage, (*agri culturae dati, arva*.) *Spelman.* *Domesday Book*, cited *ibid.* In some dictionaries, this word is incorrectly written *arnalia*, and *aralia*.

ARARE. Lat. [L. Fr. *arer*, *erer*.] To plough; in old English, to ear or are.

ARATOR. Lat. [from *arare*, q. v.] In old English law. A ploughman; an arable farmer. *Brande.*

ARATRIFABER. L. Lat. [from *aratrum*, a plough, and *faber*, a smith.] A plough-wright. *Towns. Pl.* 237.

ARATRUM TERRÆ. L. Lat. In old English law. A plough of land; a plough land; as much land as could be tilled with one plough. *Whishaw.* *Bell's Dict.* See *Carucate*.

ARATURA TERRÆ. L. Lat. In old English law. The ploughing of land; the service which the tenant was to do for his lord in ploughing his land. *Whishaw.*

ARATURIA. L. Lat. [from *arare*, q. v.] In old English law. Land used for ploughing; arable land, (*campus arabilis*.) *Spelman.*

ARAYER, Araer, Arair. L. Fr. To array; to prepare; to settle. *Kelham.*

ARBITER. Lat. In the Roman law. A judge invested with a discretionary power. A person appointed by the prætor, to examine and decide that class of causes or actions termed *bonæ fidei*, and who had the power of judging according to the principle of equity, (*ex æquo et bono*); distinguished from the *judex*, (q. v.) who was bound to decide according to strict law. *Inst.* 4. 6. 1. *Cooper's Notes*, in loc. *Brissonius.* *Cowell.*

A person to whom contending parties submitted the decision of their dispute, without the interference of a magistrate; answering to the modern term *arbitrator*. The *arbitri* were appointed by an agreement called *compromissum*, and were hence termed *arbitri compromissarii*, or *arbitri ex compromisso*. *Dig.* 4. 8. *Cod.* 2. 56. *Cooper's Inst.* ub. sup. *Brissonius.* In Scotch law. An arbitrator. *Bell's Dict.*

ARBITRAMENT, Arbitrement. [L. Lat. *arbitramentum*, *arbitrium*.] The award, determination or decision of arbitrators upon the matter of dispute which has been submitted to them.* *Cowell.* *Termes de la Ley.* See *Award*.

ARBITRATION. [Lat. *arbitratio*, *arbi-*

tratus.] The investigation, before an unofficial person, of the matter in difference between contending parties, pursuant to an agreement, (usually in writing,) termed a *submission*.* *Brande.* The adjudication upon a matter in controversy, by private individuals, selected and appointed by the parties. *P. Cyclopaedia.* 3 *Bl. Com.* 16. 3 *Steph. Com.* 374. *Billings on Awards*, 3.

ARBITRATOR. Lat. and Eng. [*Lat. arbiter compromissarius.*] A disinterested person, to whose judgment or decision matters in dispute are submitted by consent of parties. 3 *Bl. Com.* 16. *Reg. Orig.* 111.

An arbitrator is a judge of all matters of law and fact included in the case submitted to him; and being a judge chosen by the parties themselves, his decision generally is absolutely final. *Billings on Awards*, 55—65. *Russell's Arbitrator*, 112. It is the usual practice for each party to appoint an arbitrator, with a stipulation that if the arbitrators do not agree, another person shall be called in as *umpire*, to whose sole judgment it is then referred. 3 *Bl. Com.* 16. See *Umpire*.

ARBITRATUS. L. Lat. In old English law. Awarded. *Idem arbitratore arbitratu fuissent et adjudicassent*; the said arbitrators awarded and adjudged. *Reg. Orig.* 111.

ARBITRIUM. L. Lat. [from *arbiter*, q. v.] An award; the decision of an arbitrator. *Reg. Orig.* 111. **Arbitrium est iudicium.** An award is a judgment. *Jenk. Cent.* 137. *Arbitrium est iudicium boni viri, secundum equum et bonum.* An award is the judgment of a good man, according to equity and virtue. 3 *Bulstr.* 64.

Discretion or judgment used in making a decision. *Lex non-exacte definit, sed arbitrio boni viri permittit*; the law does not exactly define, but leaves to the discretion of a conscientious man or judge. *Grotius de Aquit.* a. 3. 1 *Bl. Com.* 61.

ARBOR. Lat. In the Roman law. A tree. *Dig.* 43. 27. *Id.* 47. 7. Under this name were included vines, (*vites*), ivy, (*hedera*), reeds, (*arundines*.) *Dig.* 47. 7. 3. *Id.* 43. 27. 1. 3. But not plants that were so tender as to be classed among herbs. *Id.* 47. 17. 4. Nothing could be properly called *arbor*, (a tree) which had not taken root, unless where it had been transplanted. *Id.* 47. 7. 3. 3, 4.

The mast of a ship. *Dig.* 14. 2. 3. 6.

In old English law. A tree; a tree

growing, as distinguished from *lignum*, wood, (i. e. dead wood, or wood cut.)

Arbor dum crescit, lignum eum crescere necit.

[That which is] a tree while it grows [is] wood when it ceases to grow. *Cro. Jac.* 166. *Hob.* 77, in marg. See *Lignum*. But see *Dig.* 47. 7. 3. 5.

ARBOR CIVILIS. Lat. In old English law. A civil tree; a tree of parentage. A figure or table, in the shape of a tree, showing the degrees of relationship between persons, and the course of descents from one to another. *Hale's Hist. Com. Law*, 335. Bracton made use of a "tree" of this kind, as an illustration, and refers to it, (fol. 68 b.) as *ante principium libri picta*, but it is not found in the printed copies of his work. An *arbor civilis* may be found in Lord Coke's first Institute, and in Hale's History of the Common Law.

ARBOR FINALIS. Lat. In old English law. A boundary tree; a tree used for making a boundary line. *Bract.* fol. 167, 207 b. See *Bound tree*.

ARCA. Lat. In the civil law. A chest or coffer; a place for keeping money. *Dig.* 30. 30. 6. *Id.* 32. 64. *Brissonius*.

ARCA CHIROGRAPHICA (or **CHIROGRAPHORUM**) **JUDÆORUM.** L. Lat. The charter chest of the Jews. A common chest, with three locks and keys, kept anciently, in England, by certain Christians and Jews specially designated for that purpose, in which all the contracts, mortgages and obligations belonging to the Jews were kept; and this by order of King Richard I. *Blount. Molloy de Jur. Marit.* 465, 466.

ARCANA IMPERII. Lat. Mysteries of government; secrets of state. 1 *Bl. Com.* 387.

ARCARIUS. Lat. [from *arca*, a chest.] In civil and old English law. A treasurer; a keeper of public money. *Cod.* 10. 70. 15. *Spelman*.

ARCEO. L. Lat. In old records. A saddle-bow. *Cowell*.

ARCEWESCHE, *Arcevesque.* L. Fr. Archbishop; an archbishop. *Conf. Chart.* 25 Edw. I. *Kelham.* Corruptions of *archievesque*.

ARCHAIONOMIA, (Gr. ἀρχαιονομία,) *sive de principis Anglorum legibus.* The title of a collection of Saxon laws, made by Mr. Lambard in the time of Queen Elizabeth, and to which additions were made

by Dr. Wilkins. 1 *Reeves' Hist. Eng. Law*, 27. Some of these Saxon laws are now considered as spurious. 2 *Hallam's Middle Ages*, 444. 1 *Spence's Chancery*, 18, 19, and note. See *Leges Edwardi Confessoris*.

ARCHBISHOP. [Lat. *archiepiscopus*, Fr. *archievêque*.] In English ecclesiastical law. The chief of the clergy in his province, having supreme power under the king or queen in all ecclesiastical causes.* 1 *Bl. Com.* 380. 3 *Steph. Com.* 62. *Wharton's Lex.* The archbishops in England are also termed *primates* and *metropolitans*, (qq. v.) 1 *Wooddes. Lect.* 181.

ARCHDEACON. [L. Lat. *archidiaconus*, *archilevita*.] In English ecclesiastical law. An ecclesiastical officer having jurisdiction immediately subordinate to the bishop, through the whole of his diocese, or in some particular part of it. He is usually appointed by the bishop himself, and has a kind of episcopal authority, originally derived from the bishop, but now independent and distinct from his. 1 *Burn's Eccl. Law*, 68, 69. 1 *Bl. Com.* 383. 3 *Steph. Com.* 69. 4 *Reeves' Hist. Eng. Law*, 5. *Cowell*.

ARCHDEACON'S COURT. In English ecclesiastical law. A court held before a judge appointed by the archdeacon, and called his official. 3 *Steph. Com.* 430. Its jurisdiction has, until recently, comprised the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. *Id. ibid.* It is the most inferior court in the whole ecclesiastical polity of England. 3 *Bl. Com.* 64. See *Ecclesiastical courts*.

ARCHES COURT, or COURT OF ARCHES. [L. Lat. *curia de arcubus*.] In English ecclesiastical law. A court of appeal, and also of original jurisdiction, belonging to the archbishop of Canterbury; so called from its having been anciently held in the church of St. Mary-le-bow, (*Beata Maria de arcubus*.) or Bow church, (literally the "church of arches," so termed from the fashion of its steeple.)* *Reg. Orig.* 54 b. 3 *Bl. Com.* 65. 3 *Steph. Com.* 431. 4 *Reeves' Hist. Eng. Law*, 104. *Cowell*. The judge of this court is called the *Dean of the arches*, and his office is to receive and determine appeals from the sentences of all inferior ecclesiastical courts within the province. 3 *Bl. Com.* 65. Many suits also are brought before him as original judge, the cognizance of which pro-

perly belongs to inferior jurisdictions within the province, but in respect of which the inferior judge has waived his jurisdiction under a certain form of proceeding known in the canon law by the denomination of *letters of request*. 3 *Steph. Com.* 431. 2 *Chitt. Gen. Pr.* 496. From the Court of Arches an appeal formerly lay to the Court of Delegates, but it now lies, by statute 2 & 3 Will. IV. c. 92, to the privy council. 3 *Steph. Com. ub. sup.* This court is now held at Doctors' Commons. 2 *Chitt. Gen. Pr.* 499.

ARCHICAPELLANUS. L. Lat. In old European law. A chief or high chancellor, (*summus cancellarius*.) *Spelman*.

ARCHIDIACONUS. L. Lat. In old ecclesiastical law. Archdeacon. *Spelman*, voc. *Archiepiscopus*. Called also *archilevita*. *Id.*

ARCHIDUX. L. Lat. In old European law. Archduke. *Spelman*, voc. *Archiepiscopus*.

ARCHIEPISCOPUS. Lat. In ecclesiastical law. Archbishop; an archbishop. *Spelman*. *Archiepiscopus Cantuar.*; archbishop of Canterbury. *Archiepiscopus Ebor.*; archbishop of York. *Towns. Pl.* 148.

ARCHIEPUS. A contraction of *archiepiscopus*. 1 *Instr. Cler.* 8.

ARCHIOMUM, Arcorum. L. Lat. In old records. A stack or mow. *Spelman*.

ARCHIVES. [L. Lat. *archiva*, *archia*, (Gr. *ἀρχεια*, Nov. 74.) *grammatophylacia*, *chartophylacia*, *tabularia*, *tablina*.] A place or apartment where the public papers or records of a state or community are deposited; a repository of ancient records, charters and evidences, such as the Rolls' office and the Chancery and Exchequer offices in England. *P. Cyclopaedia*. *Cowell*. A repository of records established by public authority. *Poth. Obl.* part 4, ch. 1, art. 2, § 2.

The records or writings so deposited.

A private repository in libraries. *Cowell*. See *Archivum*.

ARCHIVUM, Archium. [Gr. *ἀρχειον*.] In the civil law. A place for the public deposit of writings, instruments or records, (*quo in publico instrumenta deponuntur, archio forte, vel grammatophylacio*.) *Dig.* 48. 19. 9. 6. The Gr. singular *ἀρχειον* is used by Justinian, in his 15th Novel, (chap. 5, § 2,) to denote the building in which records are kept, and which is described as some public building in a city,

set apart for the reception of records, under the care of a keeper, where they could be preserved from injury, and yet be accessible to those who would consult them. The plural *apxeta* is used in other places. *Nov.* 74, c. 4, § 2.

APXAN, APXW. Gr. In the Roman law A ruler; a magistrate. *Dig.* 26. 5. 21. *Nov.* 95.

ARCIBUM, Arceps. L. Lat. In old European law. An archive; a repository of writings or records, (*archivum, scrinium*.) *Formul. Vet.* c. 8. *Marculf.* lib. 2, c. 38. *Spelman.*

ARCIFINIUS. Lat. In the civil law. A term applied to land which was comprised within no measurement, (*qui nullâ mensurâ continetur*.) *Jul. Frontin. de agror. qualit.* p. 38. So called, according to Varro, because it had boundaries suited to repel enemies, (*fines arcendis hostibus idoneas*.) *Grotius de Jur. Bell.* lib. 2, c. 3, § 16, subd. 1, 2.

ARCT. L. Fr. [from *arcter*, q. v.] Bound; compelled; forced. *L. Fr. Dict.* Straightened; confined. *Yearb.* M. 20 Hen. VI. 16.

ARCTA. Lat. In the civil law. Close; confined; contracted; narrow. A term applied to a woman having certain physical defects. *Dig.* 21. 1. 14. 7.

ARCTA ET SALVA CUSTODIA. L. Lat. Close and safe custody. See *In arcta*, &c.

ARCTABLE. L. Fr. Forcible. *L. Fr. Dict.*

ARCTARE. Lat. In old English law. To narrow. *Arctata*; narrowed. *Fleta*, lib. 4, c. 1, § 19.

ARCTER. L. Fr. To bind; to compel or force. *Id.*

ARCUATUS. L. Lat. [from *arcus*, an arch.] Fashioned like an arch; arched. *Towns. Pl.* 188.

ARDER. L. Fr. [from Lat. *ardere*.] To burn. *Mirr.* c. 1, § 8. See *Ardour*.

ARDOUR. L. Fr. [from *arder*, q. v.] In old English law. A burner; an incendiary. *Ardours de mesons*; burners of houses. *Britt.* c. 29. *Ardours sont qui ardent cite, ville, maison, beast, ou autres chateaux*; burners are those who burn a city, town, house, animal or other chattels. *Mirr.* c. 1, § 8.

AREA. Lat. In the civil law. A vacant space in a city; a place not built upon. *Locus sine edificio in urbe area appellatur.* *Dig.* 50. 16. 211.

The site of a house; a site for building; the space where a house has stood. The ground on which a house is built, and which remains after the house is removed. *Brissonius. Calv. Lex.*

A threshing-floor. *Dig.* 34. 1. 14. 3.

In old English law. A floor. *Area lignea*; a wooden or plank floor. *Dyer*, 108.

A piece or plot of ground. *Spelman.*

AREISTER. L. Fr. To stop or stay. *Et sur ceo la court areistruit un piece, pur adviser sur ceo point*; and upon this, the court stayed a while, to advise upon this point. *Yearb.* M. 3 Edw. III. 40.

AREMENAUNT, Arenaunt. L. Fr. Forever after. *Britt.* c. 24. *Kelham.*

ARENALES. Span. In Spanish law. Sandy beaches; or grounds on the banks of rivers. *White's Recop.* b. 2, tit. 1, c. 6.

ARENES, Aresnez, Aresenez. L. Fr. Arraigned; brought to the bar of the court; put to answer; called in question. *Britt.* c. 4. *Kelham.*

ARENIFODINA. Lat. [hom. *arena*, sand, and *fodire*, to dig.] In the civil law. A sand-pit. *Dig.* 7. 1. 13. 5.

ARENTARE. L. Lat. In old English law. To rent out, or let at a certain rent. *Cowell. Si quis arentaverit in curia sua finem pro pulchre placitando*; if any one shall have rented out [the right of taking] in his court a fine for beau pleader. *Fleta*, lib. 4, c. 5, § 17. See *Arrentare*.

ARENTATIO, Arrentatio. L. Lat. [from *arentare*, q. v.] In old English law. A renting or rent. *Reg. Orig.* 257 b. See *Arrentatio*.

ARER, Arrer. L. Fr. [from Lat. *arare*.] In old English law. To plough. *Arer et semer*; to plough and sow. *Litt. sect.* 119. *Arer et seymer. Kelham. Arer les prees*; to plough the meadows. *Britt.* c. 5.

ARERE. L. Fr. [L. Lat. *a retro*.] In old English law. Behind, in arrear. *Riens en arriere*, (q. v.); nothing in arrear.

Back; again. [L. Lat. *re, iterum*.] *Les bestes viendrent a luy arere*; the beasts shall come back to him. *Reg. Orig.* 97 b. *Achate arere*; bought back. *Dyer*, 35 b. (Fr. ed.) *Fuit argus arere*; it was argued again. *Freem.* 27.

AREREMAIN. L. Fr. Back again. *Keilw.* 30, pl. 2.

ARERISSEMENT. L. Fr. Hindrance; delay; prejudice. *Kelham.*

ARESTER, Areiter. L. Fr. To stop or stay; to arrest. *L. Fr. Dict.* See *Areister*.

ARET. L. Fr. An account. *L. Fr. Dict.* *Arete*; taken or charged with some crime. *Id.* See *Arret*.

ARETRO. L. Lat. In old English law. Behind; in arrear. *Quod ei aretro fuit*; which was in arrear to him. 2 *Inst.* 533. *In aretro*; in arrear. 2 *Salk.* 583. 12 *Mod.* 5.

ARG. An abbreviation of *arguendo*; (q. v.) much used in the reports. Prefixed to a quotation from the civil law, it implies that the text or law produced is not a direct, but a consequential proof. *Tayl. Civ. Law*, 25.

ARGENTARIA. Lat. [from *argentum*, silver, or money.] In the civil law. The trade or business of a dealer in money; the trade of a banker or money-changer. *Dig.* 2. 13. 4. *Calv. Lex.* See *Argentarius*.

ARGENTARIUS. Lat. [from *argentum*, silver or money.] In the civil law. A dealer in money, (*nummularius*;) a money-changer, (L. Lat. *campso*;) one who received money on deposit, and loaned money on interest; a banker. *Calv. Lex.* *Brissonius.* *Dig.* 2. 13. 4, 6, 8, 9, 10. *Id.* 46. 3. 88. *Cod.* 10. 64. 1. *Nov.* 136.

* * The *argentarii* were an important class of dealers at Rome and in the provinces, who transacted their business in the forum, where they had their shops or stalls, (*tabernæ*;) and tables, (*mensæ*;) Besides the ordinary business of receiving, exchanging and loaning money, they performed many of the duties of brokers, notaries and auctioneers; and they also acted sometimes as inspectors of money. They were known by a variety of names; such as *nummularii*, from the money; (*nummus*;) in which they dealt; *mensarii* and *mensularii*, (or *trapezitas*) from the tables (*mensæ*;) at which they stood or sat; *argenti distractores* or *venditores*, sellers of money; *coactores* and *collectarii*, collectors; besides the Greek appellations, ἀργυροπράται and ἀργυροπρατικοί, sellers of money; ἀργυροποιοί or καλλοβιοτάι, money-changers; ἀργυρογνώμονες, examiners of money, and the like. *Calv. Lex.* In the ninth edict of the Emperor Justinian, (in *procem*;) mention is made of the corporation of *argentarii*.

ARGENTARIUS. Lat. [from *argentum*, silver or money.] In old English law. A dealer in silver or money; a banker; a silversmith. *Towns. Pl.* 259, 260.

ARGENTARIUS MILES. L. Lat. In old practice. A kind of money-porter in the English exchequer. An attendant who

carried the silver from the lower to the upper exchequer to be examined. *Spelman*, voc. *Argenteus*.

ARGENTEUS. L. Lat. An old French coin, answering nearly to the English shilling. *Spelman*.

ARGENTIFODINA. Lat. In civil and old English law. A silver mine. *Dig.* 3. 4. 1. *Bract.* fol. 222 b.

ARGENTUM. Lat. In the civil law. Silver. *Dig.* 34. 2. 19. 27. *Argentum factum*; silver made, i. e. wrought into articles of various kinds. *Dig.* 34. 2. 19. 9. *Argentum infectum*; silver unwrought, or in the mass. *Infecti argenti appellatio rudem materiam continet, id est, non factum.* *Id.* 34. 2. 19. 11.

ARGENTUM. Lat. In old English law. Silver. See *infra*.

Silver plate. 1 *Ld. Raym.* 20. *Comb.* 306.

Silver bullion, or uncoined silver; money paid by weight. *Domesday.* *Spelman*.

Money generally; money paid by tale, or counted; (*pecunia numerata*;) *Id.*

Goods generally. *Id.*

ARGENTUM ALBUM. L. Lat. In old English law. Plain or blank silver, not marked or stamped, (*non signatum*;) uncoined silver; bullion; silver coin worn smooth by use; common silver coin, as distinguished from the metal of full weight and purity. See *Album*, *Blancus*. By Domesday tenure, some rents to the king were paid in *argento albo*, (common silver pieces of money,) other rents in *libris areis et pensatis*, (money burnt, or melted and weighed.) *Kennett's Par. Ant.* *Cowell*.

White rent, or blanch farm. See *Alba firma*.

ARGENTUM DEL. Lat. In old English law. God's money. Earnest money; money given by way of earnest upon the making of a bargain; sometimes called God's penny, (*denarius Dei*;) *Cowell.* *Petyt MSS.* cited in *Barrington's Obs. Stat.* 204, note [g]. See *Denarius Dei*.

ARGUENDO, (abbrev. ARG.) Lat. In arguing; in the course of argument. A term often used in the books. *Arguendo et redarguendo*; arguing and confuting. *Flota*, lib. 2, c. 66, § 18.

ARGUMENTATIVE. In pleading. Indirect; inferential. *Steph. Pl.* 179. Pleadings must not be argumentative. *Id.* ch. 2, sect. 5, rule 3. In other words, they must advance their positions of fact in an absolute form, and not leave them to be collect-

ed. by inference and argument only. *Id. ibid.*

ARGUMENTUM. Lat. Argument or reasoning; especially that of the presumptive kind. *Struvius, Jurispr. Rom. Germ.* lib. 4, tit. 11, n. 3.

Inference or deduction; presumption. *Matthæus de Crim.* in lib. 48, Dig. tit. 15, c. 6.

Evidence; presumptive evidence. *Calv. Lex. Dig.* 48. 18. 1. 1, 4. *Id.* 49. 16. 5. 6.

Argumentum ab auctoritate est fortissimum in lege. An argument from authority is the strongest in the law. *Co. Litt.* 254 a. "The book cases are the best proof of what the law is." *Id. ibid.*

Argumentum ab impossibili valet in lege. An argument drawn from an impossibility is forcible in law. *Co. Litt.* 92 a.

Argumentum ab inconvenienti plurimum valet [est validum] in lege. An argument drawn from inconvenience is of the greatest weight [is forcible] in law. *Co. Litt.* 66 a, 97 a, 152 b, 258 b. *Broom's Max.* 84, [139.] If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience prove only want of foresight in the grantor. 3 *Madd.* 540. 7 *Taunt.* 496. 3 *Bing.* 590. So, where the law is doubtful and not clear, the judges ought to interpret the law to be as is most consonant to equity and least inconvenient. But where the law is known and clear, though it be inequitable and inconvenient, the judges must determine as the law is. *Vaugh.* 87, 88. And see per Bayley, J. 4 *M. & S.* 531. Sir W. Scott, 1 *Dods.* 402. Lord Brongham, 6 *Cl. & Fin.* 671.

Argumentum a divisione est fortissimum in jure. An argument from division is of the greatest force in law. *Co. Litt.* 213 b. 6 *Co.* 60. *Wingate's Max.* 260, max. 71. Thus, to show that a certain annual payment of money is not properly a rent, Littleton argues from a division of the subject, thus: "For if it should be a rent, it must be rent service, rent charge, or a rent seck, and it is not any of these." *Litt.* sect. 345. Lord Coke applies the same kind of argument to commons. 6 *Co.* 60.

Argumentum a majori ad minus negative

non valet; valet e converso. An argument from the greater to the less is of no force negatively; conversely, it is of force. *Jenk. Cent.* 281.

Argumentum a simili valet in lege. An argument from a like case, (from analogy) is good in law. *Co. Litt.* 191.

ARIBANNUM, Arribannum. L. Lat. In old European law. A fine for not joining the army, when called out by public summons. *Spelman.*

The summons or proclamation itself. *Id.* *Spelman* thinks the proper form of this word was *heribannum*, unless it be considered a contraction of *arribannum*, (q. v.) See *Heribannum*.

ARIERBAN. See *Arrierban*.

ARIMANDIÆ. L. Lat. In feudal law. *Feud. Lib.* 2, tit. 56. The same, perhaps, with *armandia*, (q. v.)

ARIMANNI. L. Lat. [from Sax. *heri*, lord, and *man*, vassal.] In mediæval law A class of freemen employed in agriculture, otherwise called *conditionales*, *originarii*, *tributales*, &c. They seem to have been persons who possessed some small allodial property of their own, and, besides that, cultivated some farm belonging to their more wealthy neighbors, for which they paid a fixed rent, and bound themselves likewise to perform several small services, such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vintage work, &c. 1 *Robertson's Charles V.* Appendix, note ix. *LL. Longob.* lib. 3, tit. 12, l. 5. *Id.* tit. 13, l. 3. *Spelman* defines them to be military tenants, possessing benefices and grants of land from the emperor, (*milites et beneficia et prædia ab imperatore concessa possidentes*;) younger vassals, (*vassalli juniores*.) *Gloss. voc. Arimannus.*

ARIPENNA, Aripennum. See *Arpen-nis*.

ARLES. In Scotch law. Earnest; money, or other thing given by a buyer to a seller, as a symbol of the bargain. 1 *Forbes' Inst.* part 2, b. 3, c. 1, tit. 7, sec. 1.

ARM OF THE SEA. [L. Lat. *brachium maris*; L. Fr. *brace de la mer*.] A portion of the sea where the tide flows and re-flows.* 5 *Co.* 107. 7 *Peters' R.* 331, arg. 1 *Kenf's Com.* 26—30. "That is called an arm of the sea, where the sea flows and re-flows, and so far only as the sea flows and re-flows." *Hale de Jure Maris*, pars 1, c. 4. 22 *Ass.* 93. An arm of the sea is considered as extending as far into the

interior of a country as the water of fresh rivers is propelled backward by the ingress and pressure of the tide. *Angell on Tide Waters*, 73, ch. 3.

ARMA. Lat. In the civil and old English law. Arms; weapons offensive and defensive; * any thing that a man strikes or hurts with. *Co. Litt.* 161 b, 162 a. In the civil law, this word included not only shields, swords and helmets, but also clubs and stones, and all things coming under the denomination of *tela*, (weapons.) *Armorum appellatione non solum scuta et gladios et galeas, significari intelligimus sed et fustes et lapides.* *Inst.* 4. 15. 6. *Dig.* 50. 16. 41. *Arma sunt omnia tela, &c.* *Dig.* 43. 16. 3. 2. See *Nov.* 85. This definition, however, is not adopted by Bracton. *Ligna et lapides sub armorum appellatione non continentur.* *Bract.* fol. 144 b. The same author makes several divisions of arms; as arms of peace and of justice, (*arma pacis et justitiæ*), and arms of breach of the peace and of wrong, (*arma perturbationis pacis et injuriæ*.) *Id.* fol. 162 b. See *Fleta*, lib. 4, c. 4, § 6. He also uses the barbarous singular *armum*, (q. v.)

ARMA MOLUTA. L. Lat. In old English law. Sharp weapons, as swords and battle-axes, that cut or inflict a wound; distinguished from sticks and stones, which only break or bruise. *Bract.* fol. 144 b. Called *arma emolita.* *Fleta*, lib. 1, c. 33, § 6.

ARMA. L. Lat. In old English law. Armor; arms or cognizances of families; (*insignia gentilitia*.) *Spelman.* *Arma dare*; to dub, or make a knight. *Kennel's Par. Ant.* 101, 289. *Cowell.* *Arma capere*, or *suscipere*; to take upon one the order of knighthood; to be made a knight. 2 *Reeves' Hist. Eng. Law*, 288.

ARMAMENTA NAVIS. Lat. In the civil law. The tacklings or equipments, (Gr. *ἐπλῶ*) of a ship. *Loccenius de Jur. Mar.* lib. 1, c. 2, sect. 5.

ARMANDIÆ, Armanniæ. L. Lat. In feudal law. Workshops, (*fabricæ*), public armories. *Cujac.* lib. 5, feud. p. 292. *Hotom. de Verb. Feud.*

ARMATA VIS. Lat. In the civil law. Armed force. *Dig.* 43. 16. 3. *Fleta*, lib. 4, c. 4. See *Vis armata*.

ARMATURA. L. Lat. In old English law. Armor. *Mem. in Scacc.* T. 20 Edw. I. The use of weapons. *Towns. Pl.* 217, 228.

ARME. L. Fr. A weapon. *De quel*

arme il fuist occise; with what weapon he was slain. *Stat. Glocest.* c. 9.

ARMIG'. An abbreviation of *armiger*. (q. v.)

ARMIGER. Lat. [from *arma*, arms, and *gerere*, to bear.] In feudal and old English law. One who bears arms; an armor-bearer, or shield-bearer, (Lomb. *scilpor*; Sax. *scildcnafe*.) *Spelman.*

An esquire; a knight's attendant. *Id.*

An esquire; one who bears arms, or coat armor, (*qui arma gerit*.) See *Esquire*.

A species of feudal tenant; a tenant by scutage, or the service of the shield; (*per servitium scuti*.) *Spelman.*

A servant, domestic or valet. *Id.* *LL. Edw. Conf.* c. 21, *ibid.*

ARMILUSTRUM. L. Lat. In old records. A showing of armor; military training. *Towns. Pl.* 215.

ARMISCARA. L. Lat. In old European law. A kind of fine. *Spelman.* See *Harmiscara*.

ARMS. [Lat. *arma*.] Weapons offensive and defensive; * any thing that a man strikes or hurts with. *Co. Litt.* 161 b; 162 a. See *Arma*, *Force and arms*.

ARMUM. L. Lat. [L. Fr. *arme*.] In old English law. A weapon. *Armum molutum*; a sharp weapon. *Bract.* fol. 138, 145.

ARMURE. L. Fr. Arms; armor; armed men. *Kelham.*

ARNALIA. A misprint for *arvalia* or *aralia*; copied in many of the books. See *Aralia*.

AROMATARIUS. L. Lat. In old pleading. A grocer. But see 1 *Ventr.* 142.

ARPENNIS, Arpenus, Arpendus, Arpentum. L. Lat. An arpent; a measure of land frequently mentioned in Domesday Book. *Spelman.* Various other forms of the word occur in old laws and writers; as *arpennum*, *arpendium*, *arapennis*, *arepennis*, *aripennis*, *aripennum*, *arvipennium*, and *arvipendium.* *Id.*

ARPEN, Arpent. Fr. [L. Lat. *arpenis*, *arpenus*; by some derived from *arare*, to plough.] A measure of land of uncertain quantity, mentioned in Domesday and other old books; by some called an acre, by others half an acre, and by others a furlong. *Spelman*, voc. *Arpennis.* *Cowell.* *Blount.*

A measure of land in Louisiana. 6 *Peters' R.* 763.

A French measure of land, containing

one hundred square perches, of eighteen feet each, or about an acre. *Spelman*, voc. *Arpennis*. But the quantity varied in different provinces. *Id.*

ARPENTATOR. L. Lat. [from *arpen*, or *arpent*, q. v.] In old French law. A measurer or surveyor of land. *Spelman*, voc. *Arpennis*. *Cowell*. *Blount*.

ARRA. Lat. In the civil law. Earnest: evidence of a completed bargain. See *Arrha*. Calvin and Brissonius give the word in this form, but in the modern editions of the *Corpus Juris Civilis*, it is written, *arrha*.

ARRÆ. In old English law. Earnest. *Dum tamen à venditore arrarum nomine aliquid receptum fuerit*; provided something have been received as earnest, by the seller. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 2. See *Arra*.

ARRAGE. L. Fr. Mad or insane. *Home arrage*; a madman or lunatic. *Britt.* c. 26.

ARRAIAMENTUM. L. Lat. [from *arraiare*, q. v.] In old English law. An arraying or array; the array. *Co. Litt.* 256 a. *Calumpniavit arraiamentum*; challenged the array. *Dyer*, 37 b. (Fr. ed.) See *Array*.

ARRAIARE. L. Lat. In old English Law. To array; to set in order. *Arraiatus*; arrayed. *Towns. Pl.* 215. *Modo guerrino arraiata*; arrayed in warlike manner. *Keilw.* 82.

Arraiatio peditum; an arraying of foot-soldiers. *Pat. I Edw. II.* cited in *Cowell*. See *Array*.

ARRAIATORES. L. Lat. In old English law. Arrayers; commissioners of array. Officers who had care of the soldiers' armor, and to see them duly accounted in their kinds. *Stat. 12 Ric. II.* c. 6. *Cowell*. *Blount*.

ARRAIGN. [L. Fr. *arener*, *arraigner*, *arrainer*, *arraisoner*, *aresner*, from a *resn*, or *reson*, Lat. *ad rationem ponere*, to put or call to an account, (but see *infra*); L. Lat. *arrainare*, *arraniare*, *arramare*, *arreniare*, *arrenare*, qq. v.] In criminal law. To call a man to answer in form of law. To *arraign a prisoner* is to call him to the bar of the court, to answer the matter charged against him in an indictment. 4 *Bl. Com.* 322. 2 *Hale's P. C.* 216. 4 *Steph. Com.* 392. Or, according to Lord Coke, it is to *take order* that he appear, and for the certainty of the person, to hold up his hand, and to plead a sufficient plea to the indict-

ment, &c. *Co. Litt.* 263 a. See *Arraigner*, *Ad rationem ponere*.

In old English law. To order, or set in order; to conduct in an orderly manner; to prepare for trial. To *arraign an assise* was to cause the tenant to be called to make the plaint, and to *set* the cause in such order as the tenant might be enforced to answer thereunto. *Litt. sect.* 442. *Co. Litt.* 262 b. Thus, in the case of *Savies v. Lenthal*, after stating that the crier made proclamation and called the recognitors, &c., the reporter goes on to say that "Mr. Goodwin, of Gray's Inn, *arraigned* the assise in French," &c. 3 *Mod.* 273.

To bring or prosecute. The terms *arrainare* and *arramare* (qq. v.) had this sense.

The term *arraign* is applied also to the old criminal proceeding by *appeal*. Thus, in the case of *Armstrong v. Lyle*, it is said "the appeal was *arraigned* in French by the appellant's counsel, who read the count," &c., and the reporter then proceeds to apply the term to the accused himself:—"the clerk of the crown, going to *arraign* him, it was objected," &c. 1 *Salk.* 60. So, in the later case of *Bigby v. Kennedy*, it is said, "the defendants were then brought to the bar, and Leigh, Serjeant, *arraigned* the bill [of appeal] in English, leaving out the memorandum, and it was then *arraigned* by Mr. Benton, the secondary, in like manner, and the defendants severally asked whether guilty or not guilty." 1 *W. Bl.* 713. 5 *Burr.* 2643. S. C. The word, in its application to proceedings, is now obsolete.

* * The true etymology of *arraign* is a matter of considerable uncertainty. That given by Sir Matthew Hale, and adopted by Blackstone, (a *reson*, or *ad rationem ponere*,) presents a very expressive analysis of its meaning as applied to *persons*, and is literally sustained by the language of an old Parliament roll quoted by Cowell, and by Selden, arg. 3 *Hov. St. Trials*, 121. *Stephanus Rabaz, vic. Leicest.* *arrenatus*, et *ad rationem positus, de hoc quod*, &c.; Stephen Rabaz, sheriff of Leicestershire, being *arraigned*, and *put* or called to answer (or to account) of this, that he, &c. *Rot. Parl.* 21 Edw. I. (Selden quotes it as *Rot.* 21 Edw. III. rot. 2, in dorso.) But, in the application of the word *arraign* to *proceedings*, such as *assises*, &c., (which is very common in the old books, though now disused,) this derivation becomes wholly inappropriate, and various others have ac-

cardingly been adopted. Cowell supposes *arraign* to be formed from the Fr. *arranger*, to set or put a thing in order, or in its place, answering somewhat to the modern word *arrange*. The same derivation is adopted by the author of the *Termes de la Ley*. Lord Coke says it is from the Fr. *arraigner*, to order, or set in the right place. See *supra*. And see *Astitution*. Spelman, who is very copious in his illustration of the subject, is confident of the derivation of *arraign* from the old Latin word *arramare*, corrupted into *arraniare* (the usual Latin form,) by the very slight and easy change of *m* into *n*. This opinion is remarkably confirmed by the authority of Bracton, who uses *arramare* frequently and without variation, applying it to assises and other judicial proceedings, but in no instance to persons. *Si—arramaverit super eum assisam. Bract. fol. 18. Ad assisam quam A. arramavit versus B. Id. fol. 110 b.* See more under *Arramare*. There seems to be no doubt that this was the original form of the word, as applied to *proceedings*, at least as used in English law, although in the Register it is invariably written *arrainare*. *In assisa quam arrainavit versus N. Reg. Orig. 198.* See more under *Arrainare*. The French *arrainer*, or *arrayner*, occurs in Britton with the same application to assises. *Si le fiz doit arrainer cest assise vers ascun. Britt. c. 70. Si ambideux eyent arrainy assise. Id. ibid.* See *Arrainer*. In one passage the same author uses *arener*, in its modern sense, as applied to persons. *La soient arenes par le visconte; they shall be arraigned there (in court) by the sheriff. Id. c. 4.* But the word seems not to have been generally used in this sense until a later period. For further illustration of the original meaning of *arraign*, see *Arramare*.

ARRAIGNER. L. Fr. In old English practice. To arraign; to put to the bar and call to answer. *Cest enditement n'est pas assez sufficient de vous arraigner; this indictment is not sufficient to arraign you. Yearb. H. 2 Edw. III. 3. Car home ne poiet pas estre arreyn à la suit le roy, sans apprise m due maner per enditement ou per appel. H. 2 Edw. III. 4.*

ARRAIGNMENT. In criminal law. The form or ceremony of calling a prisoner to the bar, and (in treason or felony) making him hold up his hand, or otherwise own himself to be the party charged; reading

the indictment to him, and demanding of him his plea, (guilty or not guilty,) and entering it accordingly. 4 *Steph. Com.* 392. *Brande.* According to Lord Coke, this was otherwise called *astitution*, (q. v.) *Co. Litt.* 262 b.

It is the office of arraignment to inform the accused of the nature of the offence with which he is charged, and to obtain his answer, defence or plea. 3 *Wisconsin R.* 820. In trials for minor offences, a formal arraignment, in practice, is generally dispensed with. In such cases, where the defendant has pleaded to the indictment, an arraignment will be presumed. 24 *Mississippi R.* 611.

ARRAINARE, Arranare, Arannare. L. Lat. In old English law. To arraign; to conduct in an orderly manner; to prosecute, institute or bring. *Assisam arrainare; to bring an assise, (an action so called.) In assisa quam idem A.—arrainavit versus N.; in an assise which the said A. arraigned and brought against N. Reg. Orig. 198. In quadam jurata quam idem A. arrainavit—versus S.; in a certain jury (proceeding so called) which the said A. arraigned or brought against S. Id. 33. See Id. 186, 205. In omnibus juratis arannatis. Fleta, lib. 3, c. 5, § 7. Si assisa arranne-tur. Id. lib. 4, c. 9, § 1.*

ARRAMARE. L. Lat. An old Latin word of frequent occurrence in Bracton, and constantly applied to the ancient proceeding by assise; usually translated by the modern word *arraign*; *arramare* having been corrupted into *arrainare* by a very slight change in a single letter. See *Arraign*. *Ad assisam—capiendam quam A. arramavit versus B.; to take an assise which A. arraigned [i. e. brought] against B. Bract. fol. 110 b, 111. Ad audiendum assisam quam B.—arramavit versus eundem A.; to hear an assise which B. arraigned [brought] against the said A. Id. fol. 111 b. See Id. fol. 177 b, 196 b, 219.*

* * Spelman considers this word as another form of the barbarous Latin *adrhamire*, *arhamire*, *arramire*, and derives it from the old French *arramir*, to swear, to solemnly undertake, promise or pledge. *Assisam arramare*, according to the same author, was an expression applied to both parties in that proceeding, and signified to make a solemn choice of the assise as a mode of trial, in preference to the *duellum* or *battel*, and to declare such choice openly. *Spelman, voc. Adrhamire.* So, when

a criminal originally was *arraigned*, (to use the modern word,) he was allowed to choose in what way he would be tried, and when he had made his choice, and openly proclaimed it at the bar, in answer to the question, "How wilt thou be tried?" he was said *arramare*, and to be thereupon *arraimatus*, (afterwards *arrainatus*, or *arraigned*.) This opinion has much to sustain it in the ancient practice of the courts as illustrated by Spelman, but is not easily reconcilable with the fact that the term *arraign*, in its application to criminal proceedings, has always been exclusively used to denote the act of the court, and not that of the party.

As to the meaning of the expression *assiam arramare*, so frequent in Bracton, there is less room for doubt, as that author constantly uses the expression, *portare assiam*, (to bring an assise) to denote the same thing. *Bract. fols. 26, 33, 177, 196 b, 197.* It occurs in the same sense in the Year Books. See *M. 3 Edw. II. 58, 59.* *Arramare* probably had a technical sense, expressive of some peculiarity of proceeding, which was figuratively used to denote prosecution generally, just as the modern expression, "to file a bill," is daily used to denote the commencement of a suit in equity.

ARRAMER. L. Fr. To commence. *Kelham.*

ARRAMEUR. Norm. In old French law. A stower or stevedore; an officer anciently employed to load vessels. The business of the *arrameurs* was to dispose right, and stow closely all goods in casks, bales, boxes, bundles or otherwise; to balance both sides, to fill up the vacant spaces, and manage every thing to the best advantage. *Laws of Oleron, art. xi. obs. 1 Peters' Adm. Dec. Appendix, xxv.*

ARRAMIR. L. Fr. To assemble. *Kelham.*

ARRAS, Arra. Span. In Spanish law. Jointure; donation *propter nuptias*. *White's New Recop. b. 1, tit. 6. c. 1.* The donation which the husband made to the wife, by reason of the marriage. *Id. b. 1, tit. 7. c. 3.*

ARRAY. [L. Lat. *arraia, arraiamentum.*] In practice. A ranking, or setting forth in order; the order in which jurors' names are ranked in the panel containing them. *Co. Litt. 157 a. 3 Bl. Com. 359.*

The whole panel itself; the whole body of jurors summoned to attend the court. To challenge the array is to except to the whole panel of jurors. *Id. ibid.* See *Challenge, Panel.*

To **ARRAY.** [L. Fr. *arayer, arair, arair*; L. Lat. *arraiare.*] In practice. To rank, or set in order. To array a panel is to rank or set the jurors' names in order in the panel, the names being placed one under another. *Old N. Brev. 157. Termes de la Ley. 3 Bl. Com. 359. Boots's Suit at Law, 163, note.*

ARRAYER. L. Fr. To array. See *Arayer.*

ARREARS. *Arrearages, Arrerages.* [L. Lat. *arreragia*, from Fr. *arriere, arere*, behind.] Money remaining unpaid after it has become due; as rent behind; interest due and unpaid; the unpaid balance of an account. *Spelman, voc. Arreragium. Cowell. Scotticè, "by-run."* This word generally implies that a part has been paid. *Webster.*

A devise of "all my arrears of rent and interest due at my death," has been held to carry the arrears of an annuity. *2 Vesey, Sen. 430.* But a bequest of arrears of rent will not pass a bond given to secure the arrears. *4 Vesey, Jr. 166.* Nor will the arrears of a mortgage carry the mortgage itself. *2 Id. 416.*

ARRECT, Arrect, Arret, Aret. [from L. Lat. *arrectare, or arretare, q. v.*] In old English law. To accuse or charge before a court. *Arrected, arretted*; accused or charged. *Cowell. See Arrectare, Rectare.*

To account, reckon or consider. *Arrected*; (Fr. *rette*); accounted, reckoned, considered. "It should be *arrected* great folly in her to be ignorant of her own title." *Co. Litt. 173 b.* Lord Coke appears to have borrowed this expression from Littleton's "*il serra rette la folly*," &c. *Litt. sect. 261.*

To impute, or lay to; to lay to the charge. The French *arette* used by Littleton, (sect. 665,) and elsewhere translated by Coke *arrect*, is not retained in the later editions, the word *adjudge* being substituted. *Arrect* is used in this last sense by old English writers, as Burnet and More, and in the old translations of the Bible. *Richardson's Dict. vocc. Arette, Arrect.*

ARRECT, Arrette, Arete. L. Fr. Accused, or charged with a crime. *Kelham.*

ARRECTARE, Arretare. L. Lat. [from *ad, to, and rectare, to charge; or rectum, Norm. rette, an accusation.*] In old criminal law. To accuse or charge; to accuse before a court; to summon to court, for the purpose of accusation, (*ad rectum vocare.*) See *Ad rectum, Rectum, Rectare.*

Si aliquis arrectatus fuerit de morte alicujus; if one be charged with the death of any person. *Offic. Coronatoris*, cited in *Spelman*, voc. *Arrectatus*. See record in *Hale's Hist. Com. Law*, 43.

To reckon, esteem or judge. Skene writes it *erectare*, and cites *Quon. Attach. c. de brevibus*, 31.

ARREIST. An old Scotch form of arrest. *Skene de Verb. Sign. voc. Iter*.

ARRENARE. L. Lat. In old records. To arraign. *Arrenatus*; arraigned, accused. *Cowell*. See *Arraign*.

ARRENDAMIENTO. Span. In Spanish law. The contract of letting and hiring an estate or land, (*heredad*.) *White's Recop. b. 2, tit. 14, c. 1*.

ARRENDARE, *Arrendar*. In old Scotch law. To let at a certain rent, (*ad certum rentum seu redditum dimittere*.) Called by Skene a Spanish word. *De Verb. Sign.*

ἈΡΡΕΝΟΓΟΝΙΑ, Ἀρρενογονία. Gr. [from ἄρρεν, male, and γένος, generation.] In the civil law. The male line. *Nov. 118, c. 1*.

ARRENT. In old English law. To let at a rent. "The victor might at his pleasure, give, sell or arrent." *Hale's Hist. Com. Law*, 98.

ARRENTARE. L. Lat. [from L. Fr. *arrenter*, from *a*, at, and *rente*, a payment or rent.] In old English law. To rate or assess. *Stat. Marlbr. c. 11*.

To let at a certain sum, or rent; to rent; to arrent, (q. v.)

ARRENTATIO. L. Lat. In old English law. A renting or rent. *Per certam arrentationem*; by, for, or at a certain rent. *Reg. Orig.* 252, 258.

In the forest law. An arrentation; the licensing an owner of lands in a forest to enclose them with a low hedge and small ditch, under a yearly rent. *Ordin. Forest.* 34 *Edw. I. c. 5. Reg. Orig.* 257 b. The English "arrentation" is used by Lord Bacon. *Works*, iv. 255, 256.

ARRER. L. Fr. To plough. *Britt. c. 5*. See *Arer*.

ARRERAGIUM, *Arrieragium*. L. Lat. [from Fr. *arriere*, behind.] In old English and Scotch law. An arrearage; the balance due on account; a residue or remainder, (*residuum, reliquum*.) *Spelman*. Rent due and unpaid. *Fleta*, lib. 2, c. 55, § 2. *Skene de Verb. Signif.* See *Arrears*.

ARRERE. L. Fr. Behind. *En arriere*; lately. *Kelham*. See *Arere*, *Arriere*.

ARRERISSEMENT, *Arerissement*. L. Fr. [from *arrere*, back, behind.] In old records. Hindrance; a hindrance; delay; putting back. *L. Fr. Dict. Kelham. Rot. Parl.* 4 Hen. IV. See *Arerissement*.

To **ARREST.** [L. Lat. *arrestare*, *arestare*, from Fr. *arrestar*, *arestar*, to stop, or stay; or according to *Spelman*, from Sax. *a*, to or until, and *rest*.] In practice. To stop or stay by authority of law. To stop or detain a person, and restrain his liberty until he complies with some exigency of law, (*remorari, vel aliquem sistere, usque dum legi respondeat*.) *Spelman*, voc. *Arrestare*.

To stop or stay a legal proceeding; particularly the judgment of a court, by some rule or order of the same court. See *Arrest of judgment*.

To take, seize or apprehend a person by virtue of legal process issued for that purpose, with the view either of holding him in custody, or of compelling him otherwise to comply with the exigency of the process. To subject a person to the operation of legal process, by bringing his body within the power of the officer executing such process. See *Arrest*.

To take or seize property. *Arrest*, in this sense, occurs constantly in old English practice, (see *arrestare*;) and is common in Scotch law. *Ersk. Inst. b. 3, tit. 6*. It was also formerly used in the same sense in the state of New-York, being applied particularly to ships and vessels; but has now given place, as in England, to the word *attach*, (q. v.) 1 *N. Y. Rev. Laws*, (1813,) 130. 2 *N. Y. Rev. Stat.* [493.] 405.

ARREST. [L. Lat. *arrestum*, *arestum*, *arrestatio*.] In practice. The act of stopping or staying, (*sistendi actus*;) a person or proceeding by authority of law.

The restraint of a person's liberty by the actual seizure or apprehension of his body, or otherwise, in execution of some legal process.* *Arrest* is well described in the old books as "the beginning of imprisonment, when a man is first taken and restrained of his liberty, by power of a lawful warrant." 2 *Shep. Abr.* 299. *Wood's Inst.* 575. *Whishaw*.

* * *Spelman* considers this word as signifying radically a *stopping* rather than a *seizure*, and refers to the distinction made by the civilians between an arrest and a taking or apprehension, (*differre volunt arestum a captione seu prehensione*); the latter being effected by a manual seizure, (*injectis manibus*;) the former by the mere

influence of legal authority, (*authoritatis reverentia*.) See *Calv. Lex. voc. Arrestum*. The Register, however, is an old authority for the application of the word to the seizure of chattels, (see *arrestare*); and in modern practice an arrest always contemplates either an actual seizure, or what is equivalent, a restraint of the person, with a power of actual seizure, if necessary. It has been said, indeed, that in making an arrest, the officer must actually touch or seize the party's body. 3 *Bl. Com.* 288. But in modern practice, this is not held to be absolutely necessary, for if a bailiff come into a room, and tell a defendant he arrests him, and lock the door, it is held to be an arrest, for he is in custody of the officer. 1 *Tidd's Pract.* 219, and cases there cited. And if the defendant be in any way within the power of the officer, (as within his reach, without any actual confinement,) and submits to the arrest, it has been held sufficient. 1 *Wendell's R.* 210, 215. 21 *Alabama R.* 240. But see 2 *N. Hamp. R.* 317, Woodbury, J. *United States Digest*, Arrest.

ARREST OF JUDGMENT. In practice. The act of staying a judgment, or refusing to render judgment in an action at law, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment, if given, erroneous or reversible; as where the verdict differs materially from the pleadings and issue; or where the case laid in the declaration is not sufficient, in point of law, to found an action upon. 3 *Bl. Com.* 393. 3 *Steph. Com.* 628. 2 *Tidd's Pr.* 918. *Mansel on Demurrer*, 162.

ARRESTARE, Arrestare. L. Lat. In old English law. To arrest; to take or seize a person. *Arrestentur corpora eorum*; their bodies shall be arrested. *Stat. Westm.* 2, c. 11. *Quod ipsum Wilhelmum ubicunque inventus fuerit, arrestari faciatis*; that you cause the said William, wherever he may be found, to be arrested. *Reg. Orig.* 24 b. *Arrestari et imprisonari*; to be arrested and imprisoned. *Id.* 184 b. *Capi et arrestari*; to be taken and arrested. *Id.* 278 b. *Si clericus aliquis—arrestatus fuerit. Stat. Marlbr.* c. 27. *Barringt. Obs. Stat.* 73.

To take or seize a chattel, as a vessel. *Novem arrestavit et sub arresto detinuit*; he arrested a vessel and detained it under arrest. *Reg. Orig.* 105. *T. Raym.* 490. To seize a horse, ox or

cow. *Reg. Orig.* 94, 102. See *Id.* 127. *Arrestare bona. Clerke's Praez. Cur. Adm.* tit. 24.

ARRESTATIO. L. Lat. [from *arrestare*, q. v.] In old English law. Arrestment; an arrestment or arrest. *Towns. Pl.* 53. *Arrestatio navium*; arrestment of ships. *Loccen. de Jur. Mar.* lib. 3, c. 5.

ARRESTEE. In Scotch law. The person in whose hands the movables of another, or a debt due to another, are arrested by the creditor of the latter by the process of arrestment. 2 *Kames' Equity*, 173, 175. See *Arrestment*.

ARRESTER. In Scotch law. The person or creditor in whose behalf process of arrestment is issued. 1 *Forbes' Inst.* part 3, b. 1, ch. 2, tit. 3. 2 *Kames' Equity*, 177. See *Arrestment*.

ARRESTMENT. In Scotch law. The seizure and securing of a criminal's person, till he undergo trial, or give bail. *Ersk. Inst.* b. 3, tit. 6, sect. 2.

A process for securing movable effects in the hands of the possessor, till the property be determined. This arrestment, termed *rei servandæ causa*, is a species of sequestration. 2 *Kames' Equity*, 173.

A process issued by a creditor for the purpose of securing the movable effects belonging to his debtor in the hands of a third person, (called the *arrestee*,) or a debt due his debtor by such person, and of preventing a transfer or payment until another process, called process of *forthcoming*, can be raised or obtained.* 2 *Kames' Equity*, 173. *Bell's Dict.* See *Forthcoming*.

ARRESTUM. L. Lat. In old English law. Arrest. *Spelman. Sub arresto detinuit*; (he) detained under arrest. *Reg. Orig.* 94.

ARRESTUM, Arrestum. L. Lat. [from Gr. *ἀπαύρωτος*, incorrupt, inviolate, according to Calvin; or from Gr. *ἀπαιρωτος*, pleasure, according to Budæus.] In old European law. The sentence or decree of a superior tribunal. *Calv. Lex.*

ARRET. Fr. [from L. Lat. *arrestum*, *arrestum*, q. v.] In French law. The judgment, decision or decree of a court, or parliament. A royal ordinance or decree.* So called, according to Spelman, because it puts the matter at rest after the agitation of debate or argument. *Spelman, voc. Arrestare*. But see under *Arrestum*.

ARRET. See *Arrect*.

ARRETARE, Arrettare, Arrectare. L. Lat. In old English law. To accuse or

charge; to summon for the purpose of accusing; to summon to answer a charge.* *Arretrati*; accused or charged. *Reg. Jud.* 30. *Arrette* is used by old English writers. *Richardson's Dict.*

ARRHA, Arra. Lat. In the civil law. Earnest; evidence of a completed bargain; proof of the contract of purchase and sale, (*argumentum emptionis et venditionis contractæ*.) *Inst.* 3. 24. pr. *Dig.* 18. 1. 35. 1 *Mackeldey's Civ. Law*, 170, § 178. See *Earnest*. Calvin and Brissonius write the word *arra*. Bracton and Fleta use the plural, *arræ*. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, §§ 2, 3. *Arrhæ* is used in Scotch law. *Ersk. Inst.* b. 3, tit. 3, § 5.

Evidence of the contract of espousals, (*arrhæ sponsalitiæ*.) *Cod.* 5. 1.

ARRHABO, Arrabo. Lat. [Gr. *ἀρραβών*.] In the civil law. Earnest; money given to bind a bargain. *Calv. Lex. Brissonius*, voc. *Arra*. *Grotius de Jur. Bell.* lib. 2, c. 12, § 15.

ARRIAGE AND CARRIAGE. In English and Scotch law. Indefinite services formerly demandable from tenants, but prohibited by statute 20 Geo. II. c. 50, s. 21, 22. *Bell's Dict.* *Ersk. Inst.* b. 2, tit. 6, § 42.

ARRIERBAN, Arriereban. Fr. [L. Lat. *arrieribannum*, *arribannum*; from *arriere*, behind, and *ban*, a proclamation.] In feudal and European law. The proclamation by which the arriere vassals, or inferior feudatories of a sovereign, were summoned to military service. See *Arriere vassal*.

The assembling or mustering of the vassals, in obedience to such summons.

According to Spelman, this word may import, (from *arriere*, in the sense of *iterum*, again,) a repeated summons, or second proclamation, (*iterata evocatio*, vel *citatio posterior*); the first being simply termed the *ban*; or, (from *arriere*, in the sense *retro*, behind,) a proclamation intended for those who remained behind after the first summons, (*qui retro manserint post bannum*.) *Spelman*, voc. *Aribannum*. It should not be confounded with *herebannum*, (q. v.)

ARRIERE FIEF, or FEE. In feudal law. A fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him. *Esprit des Loix*, liv. 31, cc. 26, 32. See *Subinfeudation*.

ARRIERE VASSAL. In feudal law. The vassal of a vassal; one who held of a

vassal of the crown. *Esprit des Loix*, liv. 31, cc. 26, 32.

ARRIERIBANNUM. L. Lat. In old European law. *Arrierban*, (q. v.)

ARRIVAGIUM. L. Lat. In old English law. Arrivage; arrival; the coming to a place or port. *Arrivagium navium et batellorum*; a place of common resort of merchants and shipping. *Hale de Jur. Mar.* pars 2, (de port. mar.) c. 3.

"ARRIVE." To come to, or reach one place from another; to come to, or reach a place by travelling or moving towards it. *Marshall, C. J.* 1 *Brook. R.* 411.

In insurance law. To reach that particular place or point in a harbor which is the ultimate destination of a vessel.* 2 *Cushing's R.* 439. *Fletcher, J. Id.* 453. Until that point is reached, the voyage is not ended, and the ship has not arrived. *Id. ibid.* Merely reaching the harbor is not arriving.* *Id.* See 8 *B. & C.* 119.

ARROGATIO, Adrogatio. Lat. [from *arrogare*, to take upon one's self.] In the civil law. The adoption of a person *sui juris*, which was done by imperial rescript. *Inst.* 1. 11. 1. *Id.* 3. 11. 2. *Dig.* 1. 7. 1. *Cod.* 8. 48. See *Adoption*.

ARROGATOR. Lat. [from *arrogare*.] In the civil law. One who adopted by arrogation, that is, by imperial rescript. *Inst.* 3. 11. 1, 2, 3.

ARRURE. L. Fr. A ploughing; a day's work at ploughing. *Yearb.* H. 2 *Edw.* II. 27.

ARS. L. Fr. [from *arder*, to burn.] Burnt. *De ceux que felonisement—cient autre blees, ou autre mesons ars*; of those who have feloniously burnt another's crops, or another's houses. *Britt.* c. 9.

ARSÆ ET PENSATÆ. L. Lat. Burnt and weighed. A term anciently applied to money melted, and then weighed to test its purity. See *Arsura*.

ARSION. L. Fr. Burning. *Artic. super Chart.* c. 17. An old form of arson, (q. v.) So, *arsine* and *arseun*. *Kelham*.

ARSON. [from L. Fr. *arsion*, *arson*, *arson*, L. Lat. *arsio*, from *ardere*, to burn: Sax. *bernet*: L. Lat. *incendium* or *combustio domorum*.] In criminal law. The malicious and wilful burning the house or outhouse of another man. 4 *Bl. Com.* 220. 4 *Steph. Com.* 141. The burning and consuming of any part is sufficient to constitute arson, but a mere attempt to burn by setting fire to a house, unless it absolutely burns, is not sufficient. *Hawk. P. C.* b. 1,

c. 39. 4 *Bl. Com.* 222. 4 *Steph. Com.* 143. See 2 *Russell on Crimes*, 548—568, and notes.

The English law of arson has been considerably modified in the United States; the definition of the crime being in some of the states materially enlarged, while in others, various degrees of arson have been established, with corresponding punishments. See *Wharton's Am. Crim. Law*, 369, 374, *et seq.* In New-York, arson in the first degree consists in burning the dwelling-house of another in the night time, and while there is in the house some human being. 1 *Parker's Cr. R.* 560. Malice is of the essence of the crime of arson at common law, and the same ingredient must enter into offences of house-burning created by statute. 28 *Mississippi R.* 100.

ARSURA. L. Lat. [from *ardere*, to burn.] In old English law. Burning, or melting; the trial or assay of money by fire after it was coined, in order to test its purity. A term frequently used in *Domesday Book*. *Spelman. Reddit tot libras ad arsuram*; pays so many pounds according to the test by fire; that is, so many pounds of lawful, approved or tried money. *Cowell*. The process is described at large in the *Black Book of the Exchequer*.

The loss of weight occasioned by this process. A pound was said to *burn* so many pence (*tot ardere denarios*) as it lost by the fire. *Spelman*.

ARSURE EN LE MAIN. L. Fr. Burning in the hand. See *Burning in the hand*.

ART AND PART. [O. Scotch, *airt and pairt*, *arte and parte*.] In Scotch criminal law. Contriver and partner. 3 *How. St. Trials*, 601. A technical term used to denote an accessory before and after the fact, and also an aider and abettor in the commission of a crime; generally considered equivalent to the *ope et consilio* (q. v.) of the Roman law. * *Ersk. Inst. b. 4, tit. 4, § 10.* 2 *Forbes' Inst. part 1, b. 1, c. 1.* By *art* is understood the mandate, instigation or advice that may have been given towards committing the crime; *part* expresses the share that one takes to himself in it, by the aid or assistance which he gives the criminal in the commission of it. *Ersk. Inst. ub. sup.* Though expressed in a conjunctive form, it does not however necessarily import both descriptions of guilt; since one may become *art* and *part*, either, 1. by giving a warrant or mandate to commit the crime; or, 2. by giving counsel or advice

to the criminal how to conduct himself in it; or, 3. by his assistance in the execution of it. *Ersk. Inst. ub. sup.* See *De arte et parte*. "In order to make out a party guilty of theft, *art* and *part*, it is not necessary to prove that there was any previous concert between him and the actual thief, or that he knew, some time before, that a theft was to be committed. It is sufficient if the party was conscious of what was going on at the time,—if he knew that some article, no matter what, was about to be stolen. If there was privity, even by so slight a communication with the actual thief as a nod or a wink, that would make the party so privy guilty of theft *art* and *part*. On the other hand, if the theft was really completed and over, however short the interval, if there was one, between the act and the guilty knowledge,—say that the communication was made behind a screen, or outside the door of the room, after the article was actually taken,—that would change the nature of the offence, and make it *reset*." Lord Justice Clerk, *Arkley's R.* 136.

The derivation of this phrase is uncertain. Sir George Mackenzie, in his "Discourse upon the laws and customs of Scotland in matters criminal," says that by *art* is meant that the crime was contrived by the art or skill of the accused, (*eorum arte*;) and that by *part* is meant that they were sharers in the crime committed, (*et quorum pars magna fuit*.) By other writers it has been considered as an abbreviation of the Latin phrase *artifex et particeps*. See *P. Cyclopaedia*. The following expressions occur in Pitcairn's Criminal Trials: "Delatit [accused,] off *arte and parte*." Vol. 1, part 1, p. 1. "Dilaitit of *airt and pairt*." *Id.* p. 133. "Under the pain of being held as *arte and pairt-takeris*." *Id.* p. 307.

ARTE. L. Fr. Bound; compelled; narrowed. *Kelham*. See *Arct*.

ARTEMO, Artemon. Lat. [Gr. ἀρτεμων.] In the civil law. A kind of sail, used on a vessel. Brissonius calls it a small sail attached to a large one. According to Calvin, it served to steer the ship. It seems to have been used only on special occasions, and was not considered a part of the vessel. *Dig.* 50. 16. 242. *Loccenius de Jur. Mar.* lib. 1, c. 2, sect. 5. It occurs in the New Testament, (*Acts xxvii.* 40,) where it is translated "mainsail."

ARTHEL. [properly *Arddelw* or *Ard-del.*] Brit. or Welsh. In Welsh and old

English law. To avouch, (*astipulari, asserere.*) *Davies' Dict.* cited in *Cowell*.

Used also as a substantive. Thus, by the laws of Hoel Dha, it was provided that if a man were taken with stolen goods, he must be allowed a lawful *arddelw* (vouchee) to clear him of the felony. This was abolished by statute 26 *Hen. VIII.* c. 6. *Cowell. Blount.*

ARTICLE. [Lat. *articulus.*] A distinct part of a writing or instrument, consisting of two or more particulars. Hence systems of rules and instruments, composed of various particulars, or arranged in separate divisions, are called *articles*; and the term was also anciently applied to statutes drawn up in this form. See *Articles*.

A point. See *Articulus*. The French *article* and *point* (or *point*) are synonymous. *En chescun article et chescun point. Artic. sup. Chart.* c. 1.

A species of pleading in the English ecclesiastical courts, which is put in in the form of objection or charge, as for annulling a marriage, for depriving a clergyman of his benefice, &c. 4 *Chitty's Gen. Pr.* 166, 167, 200, 209. The word *article* is used in the formal parts of this pleading, as a verb. "We *article* and object to you the said —, that," &c. *Id.* 200, *et seq.* The expression "*articulately* propound" constantly occurs in pleadings in the ecclesiastical courts. *Id.* 168, *et seq.*

In Scotch practice. A subject or matter; competent matter. "Article of dittay." 1 *Brown's R.* 62. A "point of dittay." 1 *Swinton's R.* 128, 129.

ARTICLED CLERK. In English practice. A pupil of an attorney or solicitor who undertakes, by articles of clerkship containing covenants mutually binding, to instruct him in the principles and practice of the profession. *Wharton's Lex.* See *Stat. 6 & 7 Vict.* c. 73.

ARTICLES. [L. Lat. *articuli.*] A term applied to various writings drawn up in an *articulate* form; that is, under distinct heads or divisions; as

A system of rules established by legal authority; as *articles* of war, *articles* of the navy, *articles* of faith, (qq. v.)

A writing or instrument executed between parties, containing stipulations or terms of agreement; as *articles* of agreement, *articles* of partnership, the *articles* of confederation of the United States.

A statute; as having its provisions articulately expressed under distinct heads.

Several of the ancient English statutes were called *articles*, (*articuli.*) See *Articuli*.

A complaint at law drawn up in articulate form; as *articles* of the peace, (q. v.)

Heads or items of judicial inquiry. The *capitula*, chapitres or chapters given in charge to juries at the ancient eyres, were sometimes called *articles*. See *Capitula*. So, the various items of inquiry at views of frank-pledge were called *articles* of view of frank-pledge, (*articuli visus franci plegii.*) *Fleta*, lib. 2, c. 52, § 4 *et seqq.*, where the items are given at length.

ARTICLES OF CONFEDERATION.

In American law. The compact between the original thirteen states of the Union, which went into operation on the 1st of March, 1781, and remained in force until the 4th of March, 1789, when the present Constitution of the United States was adopted. See 1 *Kent's Com.* 210—219. *Story on the Const.*, b. 2, ch. 3.

ARTICLES OF FAITH. In English law. The system of faith of the Church of England, more commonly known as the *Thirty-nine Articles*; framed by Archbishop Cranmer, with the assistance of other persons of distinguished learning and piety in the reign of Edward VI.; and reduced to their present form in the Convocation of the archbishops and bishops of both provinces, held at London in the reign of Queen Elizabeth, A. D. 1562. 3 *Steph. Com.* 94, 95.

ARTICLES OF WAR. In English law. A system of rules for the government of the army, framed under the authority of the annual statutes called the Mutiny Acts. 2 *Steph. Com.* 600, 601.

In American law. A system of regulations for the government of the army and navy of the United States. *Acts of Congress*, April 23, 1800; April 10, 1806.

ARTICLES OF THE NAVY. In English law. A system of regulations for the fleet, established under the statutes 22 Geo. II. c. 33, and 19 Geo. III. c. 17. 2 *Steph. Com.* 605, 606.

ARTICLES OF THE PEACE. In English law. A complaint exhibited under oath to a court of competent jurisdiction, or to a justice of the peace, in order to compel a party who is meditating an injury to another, to find sureties of the peace. 4 *Chitty's Bl. Com.* 251, 255, note (6.) 4 *Steph. Com.* 313. 1 *Chitty's Gen. Pr.* 674, 679, note (p).

ARTICLES OF ROUP. In Scotch law.

The conditions under which property is exposed to sale by auction. *Bell's Dict.*

ARTICLES OF UNION. In English law. Articles agreed to, A. D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. 1 *Bl. Com.* 96. They were twenty-five in number. *Id. ibid.*

ARTICULI. Lat. Articles; items or heads. A term applied to some old English statutes, and occasionally to treatises. See *Articles*.

ARTICULI AD NOVAS NARRATIONES. L. Lat. Articles on the New Tales. The title of a small treatise on the method of pleading, subjoined to the collection called *Novæ Narrationes*. 3 *Reeves' Hist. Eng. Law*, 152.

ARTICULI CLERI. L. Lat. Articles of the clergy. The title of a statute passed in the ninth year of Edward II. for the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts. 2 *Reeves' Hist. Eng. Law*, 291—296. The archbishop of Canterbury preferred in the name of himself and the clergy, (*clerus*) sixteen *articles*, and received by the authority of parliament answers *seriatim* to each of them, constituting the statute which hence derived its name. *Id.* 291. Lord Coke has inserted this statute in his *Institutes*, accompanying it with a commentary. 2 *Inst.* 599. And see 2 *How. State Trials*, 131. According to Sir Matthew Hale, although not published till the reign of Edward II., it was compiled in the beginning of Edward I. *Hale's Hist. Com. Law*, 191, c. 7.

ARTICULI DE MONETA. L. Lat. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I. 2 *Reeves' Hist. Eng. Law*, 228. *Crabb's Hist. Eng. Law*, 167, (Am. ed.)

ARTICULI MAGNÆ CARTÆ. Lat. Articles of Magna Carta. The original articles or heads of agreement at the Congress in Runnymede, upon which King John's charter was founded. This document consisted of forty-nine heads, and was entitled, *Articuli Magne Carte Libertatum sub sigillo Regis Johannis*. It is given at length by Sir William Blackstone, in his valuable edition of Magna Charta. It was printed from an original formerly in the possession of Bishop Burnet. See *Blackstone's Law Tracts*.

ARTICULI SUPER CHARTAS. L. Lat. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I. st. 3, confirming or enlarging many particulars in *Magna Charta*, and the *Charta de Foresta*; and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 *Reeves' Hist. Eng. Law*, 103, 233—241. Lord Coke has included this statute in the number of those commented on in his *Institutes*. 2 *Inst.* 537. And see *Barringt. Obs. Stat.* 182.

ARTICULUS. Lat. In old English law. An article or point. *Reg. Orig.* 200. *In articulo mortis*; at the point of death.

A point or moment of time. *In ipso articulo temporis*; at the same moment or instant of time. 3 *Co.* 28. See *In articulo*.

ARTIFICIAL. [from Lat. *ars*, art, and *facere*, to make.] Made by art; created by law; the opposite of natural. See *infra*.

ARTIFICIAL PERSONS. Persons created and devised by human laws, for the purposes of society and government, as distinguished from natural persons. 1 *Bl. Com.* 123. Corporations are examples of artificial persons. *Id. ibid.*

ARTIFICIAL PRESUMPTIONS. In the law of evidence. Presumptions, (otherwise termed *legal*,) which derive from the law a technical or artificial operation and effect, beyond their mere natural tendency to produce belief; and operate uniformly, without applying the process of reasoning on which they are founded to the circumstances of the particular case. 3 *Stark. Evid.* 1235.

ARUNDINETUM. L. Lat. [from *arundo*, a reed.] In the civil and old English law. A place where reeds grow. *Dig.* 7. 1. 9. 7. *Id.* 33. 7. 12. 11. *Co. Litt.* 4 b. *Shep. Touch.* 95.

ARURA, Arrura. L. Lat. [from *arare*, to plough.] In old English law. A or the ploughing; the labor of ploughing. *Valet arura xviii den'*; the ploughing is worth eighteen pence. *Fleta*, lib. 2, c. 82, § 2. *Arruris*; in ploughings. *Bract.* fol. 230.

A day's work at the plough. *Donec aruras suas legitime compleverint, quantum videl' ad unum diem pertinebit*; until they shall have lawfully completed their ploughings, namely, as much as shall belong to one day. *Fleta*, lib. 2, c. 73, § 2. *Faciendo inde tot aruras et tot messuras.* *Bract.* fol. 35 b.

AS. Lat. In the Roman and civil law. A pound weight; and a coin originally weighing a pound, (called also *libra*); divided into twelve parts, called *uncia*, (ounces,) the several multiples of which were known by different names, according to their number. Thus, two *uncia*, making one-sixth of the *as*, constituted what was called *sextans*; three, making a quarter, were denominated *quadrans*; four, or a third, *triens*; five, *quincunx*; six, or one-half, *semis*; seven, *septunx*; eight, or two-thirds, *bes*; nine, or three-fourths, *dodrans*; ten, *dextans*; and eleven, *deunx*. *P. Cyclopedia. Adam's Rom. Ant.* 534, (Am. ed.)

Any integral sum, quantity or thing, subject to division in certain proportions. Frequently applied in the civil law to inheritances; the whole inheritance being termed *as*, and its several proportionate parts, *sextans*, *quadrans*, &c., as above explained; though it was not necessary that it should always be divided into twelve parts. *Dig.* 28. 5. 50. § 2. *Heinecc. El. Jur. Civ.* lib. 2, tit. 14, § 541. *Inst.* 2. 14. 5. *Tayl. Civ. Law*, 491-495. *Hæres ex semisse*; an heir to six parts, or half of the inheritance. *Inst. ub. sup. Hæres ex asse*; an heir to the whole estate. *Dig.* 23. 3. 85. *Pitisci Lex. voc. As*.

The term *as*, and the multiples of its *uncia* above enumerated, were also used to denote the rates of interest. 2 *Bl. Com.* 462, note (m). *Gravina, Orig. Jur. Civ.* lib. 2, § 47. It was also applied to various other things, such as land, (*Dig.* 21. 2. 39. 2;) the price of land, (*Dig.* 17. 1. 12. 8;) and shares in a partnership, (*societas*.) *Dig.* 17. 2. 76. And see *Tayl. Civ. Law*, 495, 496.

AS. L. Fr. To, into; amongst; at, on. *Kelham*.

With. *Yearb.* T. 1 Edw. II. 8.

"AS AFORESAID." Words of relation to a preceding clause in wills and other instruments. "The words *as aforesaid*, in the latter clause, necessarily draw down and incorporate the words in the former clause." Lord Ellenborough, C. J. 10 *East*, 510.

"AS FOLLOWS." The words "as follows, that is to say," held equivalent to, "in the words and figures following, that is to say," &c. 2 *W. Bl.* 787, 788. See 1 *Chitt. Crim. Law*, 233, 234.

"AS IF." [Lat. *ac si*.] As to the meaning of these words in statutes, see

Bacon's "Reading on the Statute of Uses," *Works*, iv. 195. And see *Ac si*.

Lord Bacon says of "so that," and "as if," that they both suspend the sentence. *Arg. Case of Revocation of Uses, Works*, iv. 254.

"AS OF." [L. Lat. *ut de*.] In practice and pleading. A term applied to proceedings, and to rights or estates, expressive of *sameness* of legal character, effect or operation; given in the way of *relation*, (in the case of proceedings,) by mere force of law, or absolutely existing (in the case of rights,) in point of fact.

Thus, in practice, proceedings are frequently allowed to take place, or acts to be done, (judgments to be signed, or rules entered,) *as of* some previous day or term, or, as it is otherwise expressed, *nunc pro tunc*, (now for then); that is, the judgment is, in point of fact, signed *now*, but signed in the *same form as* it would have been *then*, being dated *then*, and has the *same effect* given to it, as if it had been actually signed then. See *Nunc pro tunc*.

In pleading, the term "*as of*" is applied to rights and estates, to denote actual and absolute verity, or sameness of legal character. Thus, a party is said to be possessed of a thing, "*as of* his own proper goods," (*ut de bonis propriis*); by which is meant that he was possessed of them in the *same way as* one would be possessed of one's own goods; or, in other words, that the goods were, in point of fact, his own individual and absolute property. See *Holthouse*. The same words, "*as of*" (L. Lat. *ut de*; L. Fr. *sicome de*,) form a part of the celebrated phrase, "in his demeane *as of* fee," which is explained in another place. See *Demesne*.

ASAYER. L. Fr. To wit; to say. *Cest asayer*; that is to say. *Britt.* c. 126.

ASCAVENTER. L. Fr. To certify or make known. *Kelham*.

ASCAVOIR. L. Fr. To be understood; to wit. *Est ascavoir*, (q. v.); it is to be understood. *Litt.* sect. 9, 45. Sometimes written *assaver*, *asaver* and *a saver*. *Stat. Westm.* 1, c. 1. *Britt.* c. 89. *Id.* c. 126. See *Assaver*, *Cest ascavoir*.

ASCEND. [from Lat. *ascendere*.] To go up; to pass up or upwards; to go or pass in the ascending line. 4 *Kent's Com.* 393, 397.

ASCENDANT. [Lat. *adscendens*, *ascendens*.] In the law of descents. A person related to another in the *ascending line*

of kindred, as a father, grandfather, &c. : a person so related, to whom an estate *ascends* (to use the strictly proper term), as the next heir; an heir in the ascending line. * *Nov.* 118, c. 1, 2. *Dig.* 23. 2. 68. *Tayl. Civ. Law*, 539, *et seq.* "Failing descendants,—the succession goes to *ascendants*." *Bell's Dict.* 4 *Kent's Com.* 397.

* * This term is of frequent occurrence in the civil law, particularly in the 118th Novel of Justinian, the second chapter of which expressly treats of the succession of *ascendants*, (*visi rursu avitorum discedit*). From this source it was introduced into the Spanish and Scotch law. See *Ascendentes*. It occurs, also, in early feudal law. *Feud. Lib.* 2, tit. 50. It has not, however, been adopted to much extent in the common law, *ascend* itself, in the direct line, having been prohibited in England from a remote period, by a leading canon of inheritance, which has only recently been abolished. See *Descent*. The modern law of succession would seem to authorize its more frequent use, especially as expressive of the relation of *persons*, in preference to the word *ancestor*; leaving the latter to be employed more exclusively in its original and proper legal signification,—the former possessor (or, in the phrase of the old books, the pre-possessor) of an *estate*. See *Ancestor*.

ASCENDENTES. Lat. In feudal law. *Ascendants*. See *Ascendant*. *Ascendentes non succedunt*; *ascendants* do not succeed. *Feud. Lib.* 2, tit. 50. In the civil law, the word is written *adscendentes*. *Dig.* 23. 2. 68.

ASCENDERE. Lat. In feudal and old English law. To ascend; to go up or upwards; to pass in the ascending line of kindred. *Glanv. lib.* 7, c. 1. See *Descent*. In the civil law, the form is *adscendere*.

ASCENDIENTES. Span. In Spanish law. *Ascendants*; ascending heirs; heirs in the ascending line. *White's New Republic*. b. 1, tit. 7, c. 3, note. *Schmidt's Civ. Law*, 259.

ASCENT. Passage upwards; the transmission of an estate from the ancestor to the heir in the ascending line. See 4 *Kent's Com.* 393, 397.

ASCENT. L. Fr. Assent; knowledge. *Kelham*.

ASCERTE. L. Fr. Certified. *Kelham*.

ASCEVERER. L. Fr. To affirm. *Kelham*.

ASCIENT. L. Fr. Knowing; knowingly. *Kelham*.

ASCRIPITICI. Lat. In old English law. A species of *soke-men*, or tenants in ancient demeane, described by Bracton. *Bract. fol.* 7, 209. See *Lib. Nig. Scacc.* c. de Danegeldo, quoted by Spelman. The term is derived from the civil law, in which it was written *ascriptitii*, and *adscriptitii*, and applied to *coloni*, or tenants, whose names were registered (*ascripti*) in the archives of the colony or district where they resided. *Cod.* 11. 47, 49. 1 *Spence's Chancery*, 51, note (u). See *Adscriptitii*.

ASCRIPITUS. Lat. [from *ascribere*, to enroll.] Enrolled; registered. See *Adscriptus*.

ASCUN, *Ascuns*. L. Fr. Any one; any. *Britt.* c. 4.

Some. *Dout ascuns sount villeines, et ascuns fraunkes*; of whom some are *villeins*, and some *freemen*. *Id.* c. 83.

ASCUNEMENT. L. Fr. In any wise. *Kelham*.

ASCUS. L. Lat. [Sax. *asc*.] In old European law. A skiff or boat. *L. Salic.* tit. 23, § 3. *Spelman*.

ASEET, *Assiete*. L. Fr. Assignment. *Kelham*.

ASEIR. L. Fr. To sit. *Kelham*.

ASELEES. L. Fr. Sealed. *Kelham*.

ASES. L. Fr. Assessed. *Kelham*.

ASOUDRE. L. Fr. To absolve. *Kelham*.

ASOYNE, *Asone*. L. Fr. *Essoin*. *Kelham*. See *Essoin*.

ΑΣΦΑΛΕΙΑ, *Asphaleia*. Gr. [from *ασφαλής*, secure.] In the civil law. Security. *Cod.* 6. 38. 3.

ASPORTARE. L. Lat. In old English practice. To carry away. *Asportavit*; [he] carried away. Applied in the old writs of trespass, to the taking of inanimate things, as distinguished from *abducere*, (q. v.) *F. N. B.* 86 A. note. *Id.* 88 B. *Bract. fol.* 167. See *Cepit et asportavit*.

Asportatus; carried away. *Nisi affidat quod bona asportata valeant quadraginta solidos ad minus*; unless he make oath that the goods carried away are worth at least forty shillings. *Fleta*, lib. 2, c. 1. § 25.

ASPORTATION. [L. Lat. *asportatio*, from *asportare*, to carry away.] The carrying away of goods; one of the circumstances requisite to constitute the offence of larceny. 4 *Bl. Com.* 231. A bare re-

removal by the thief from the place in which he found the goods, though he does not quite make off with them, is a sufficient *asportation*, or carrying away. *Id. ibid.* *T. Jon.* 109.

A carrying quite away. 1 *Stra.* 634.

ASPORTATOR. L. Lat. [from *asportare*, q. v.] In old English law. One who carries away stolen goods. *Fleta*, lib. 1, c. 39, § 3.

ASPORTAVIT. L. Lat. [from *asportare*, q. v.] He carried away. Sometimes used as a noun to denote a carrying away. An "*asportavit* of personal chattels." Lord Loughborough, 2 *H. Bl.* 4.

ASS. An abbreviation of the L. Lat. *assisa* and L. Fr. *assise*.

Ass. mor. ant. An abbreviation of *assisa mortis antecessoris*. *Fleta*, lib. 4, c. 5.

Ass. no. disa. An abbreviation of *assisa nova disseisinæ*. *Id. ibid.*

ASSACH. Brit. In old Welsh law. An oath; an oath made by compurgators. A term applied, in the statute 1 Hen. V. c. 6, to a Welsh custom of clearing a person accused of killing another, by the oaths of three hundred men. The object of the statute was to abolish this custom, so far as it applied to Englishmen who might be imprisoned in Wales. *Barringt. Obs. Stat.* 382.

The exact meaning of this word appears to have been a matter of some doubt. Mr. Barrington observes that he could not find it either in Dr. Davis' Dictionary, or the Glossary to the Laws of Hoel Dda. He collects its meaning from the statute itself. It is otherwise written *assath*, (q. v.)

ASSAIA, Assaya. L. Lat. In old English law. An assay or examination. *Assisa et assaia panis*; the assise and assay of bread. *Cowell. Blount. Assaia mensurarum et ponderum*; the assay of measures and weights. *Reg. Orig.* 280.

ASSAIER, Assayer. L. Fr. To try or essay; to endeavor or attempt. *Assaiant*; trying, essaying. *Assay, assaye*; endeavored. *En assaie*; on trial. *Kelham.*

ASSALLIRE. L. Lat. In feudal law. To assault. *Feud. Lib.* 2, tit. 24, § 5. *Spelman.* See *Adsallire*.

ASSALTUS. L. Lat. In old English law. An assault. *LL. Edw. Conf.* c. 12. *Spelman. Fleta*, lib. 1, c. 31, § 6. *Assultus* is the Latin of the feudists. *Zasius de Feudis*, p. 10, nu. 38. *Cowell. Assaltus*, however, occurs in the Books of Feuds. *Lib.* 2, tit. 24, § 8. *Insultus* is the Latin

of the old common law writs. See *Insultus*.

ASSART, Essart. [L. Lat. *assartum, assertum, essartum, exartum.*] In English forest and ecclesiastical law. An offence committed in the forest, by pulling up by the roots the woods that are thickets and coverts for the deer, and making them plain, (that is, clear) as arable land. *Manswood*, p. 2, c. 9, n. 1. *Termes de la Ley. Cowell.* 1 *Crabb's Real Prop.* 486, 487, § 627.

The land itself so *assarted*, that is, cleared and prepared for, or reduced to cultivation. *Cowell.* Land grubbed up and made fit for tillage. *Bund.* 129, case 201. *Id.* 312, case 396.

The L. Lat. form of this word is written *assartum* and *essartum*, (qq. v.) the former occurring in Bracton and Fleta, the latter in the Charta de Foresta and the Black Book of the Exchequer. Spelman, who adopts the latter, derives it from the Fr. *essarter*, corresponding with the Lat. *interluare*, to thin woods by cutting trees at intervals, so as to admit the sun, (*ita ut sol interluceat*); to cut down woods; to clear of thickets; to bring rough and uncultivated grounds into a proper state for cultivation. *Essartum* he further derives from the Lat. *exartum*, pulled up by the roots; eradicated. *Spelman*, voc. *Essartum*. Mr. Somner thinks *exartum* to be a contraction of *exaratum*, ploughed up, from *exarare*, to plough up, to which opinion Dufresne also inclines. *Cowell.*

To **ASSART.** [L. Lat. *assartare, assertare, exartare, sartare.*] In forest law. To pull up by the roots; to cut down and eradicate woods; to clear land of trees, thickets, &c., and prepare it for, or reduce it to tillage. *Cowell. Spelman*, voc. *Esartum*. 1 *Crabb's Real Prop.* 486, 487, § 627. See *Assartare*.

ASSARTARE, Assertare, Exartare. L. Lat. In old English law. To assart, or remove by the roots; to clear land. See *To assart. Assertare et in culturam redigere*; to assart and reduce to cultivation. *Reg. Orig.* 257. *Assertatum*; assarted or cleared. *Id. ibid.*

ASSARTUM, Essartum, Exartum. L. Lat. In old English law. Assart; land cleared of its wood and converted to tillage. Sometimes termed *disbocatio*. *Cowell. Quia illud fuit aliquando foresta, boscus et locus vasta solitudinis, et communia, et jam inde efficitur assartum, vel*

reductum est in culturam ; because that was once a forest and a wood, and a place of vast solitude, and a common; and is now made thereof assart, or is reduced to tillage. *Bract. fol. 226. Flata, lib. 4, c. 22, § 6.*

Essartum is used in the Carta de Foresta, (9 Hen. III. c. 4,) although some copies have *assartum*. *Blackst. Law Tracts.*

ASSASSINATION. In criminal law. Murder committed for hire. *Bell's Dict.*

Murder by surprise or secret assault; murder by sudden violence. *Webster.*

ASSATH, Assaith. A custom of purgation formerly used in Wales, by which an accused party cleared or purged himself by the oaths of three hundred men. It prevailed to the reign of Henry V. when a statute was passed forbidding its continuance. *Stat. 1 Hen. V. c. 6. Spelman. Cowell.* The true form of the word seems to be *assach*, (q. v.)

ASSAULT. [from Fr. *assayler*, or *assailir*, to assail or attack; L. Lat. *assultus*, *assultus*, from *assilire*, to leap at, or against; or *insultus*, from *insilire*, to leap upon; L. Fr. *assaut*.] An unlawful setting upon one's person. *Finch, Law, b. 3, ch. 9.*—An intentional attempt, by violence, to do a corporal injury to another. *Wharton's Amer. Crim. Law, 311. 1 Hill's (N. Y.) R. 351.*—An attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him, with or without a weapon, or presenting a gun, &c. *Hawk. P. C. b. 1, ch. 62, s. 1, 2. Bac. Abr. Assault, A.*—An attempt or offer to beat another, without touching him; as if one lifts up his cane or his fist in a threatening manner at another; or strikes at him, but misses him. *3 Bl. Com. 120. 3 Steph. Com. 469. 13 East, 1.* If the person be actually touched, it is a *battery*. See *Battery*.

ASSAVER. L. Fr. To be known. An old form of *ascavoir*, (q. v.) *Si est assaver*; this is to be known. *Fet Assaver, § 22.* An old form of *c'est ascavoir*, (q. v.)

To make known; to give notice. *Kelham.*

ASSAVOIR. L. Fr. To make known; to certify. *Kelham.*

ASSAY. [L. Lat. *assaia*, *assaya*; from Fr. *assaye*, *assaie*, *essay*, a proof or trial.] In old English law. An examination, proof or trial.

A trial of weights and measures by a standard; as by the constituted authorities,

clerks of markets, &c. *Reg. Orig. 280.* See *Assaia*.

A trial or examination of certain commodities, as bread, cloths, &c. *Cowell. Blount.* See *Assaia*.

A trial or test of the purity of metals and of coined money. This is the only sense in which the word is now used.

ASSAYATOR. L. Lat. In old English law. An assayer. *Assayator regis*; the king's assayer. *Cowell.*

ASSAYSIARE. L. Lat. In old records. To associate; to take or select as fellow-judges, or consessors. *Cowell.*

ASSECURARE, Adsecurare. L. Lat. In old European law. To make secure, (*securum facere*.) *Spelman.*

To assure or secure by pledges, or any solemn interposition of faith. *Cowell.*

To confirm or establish. *Reg. Orig. 107 b.* See *Adsecurare*.

ASSECURATIO, Adsecuratio. L. Lat. [from *assecurare*, q. v.] Assurance; a making secure. See *Assurance*. *Assecuration* is used by old English writers. *Richardson's Dict.*

In old maritime law. Assurance or insurance of a vessel or cargo; (*aversio periculi*.) *Loccenius de Jur. Mar. lib. 2, c. 5.*—A contract for the safe transportation of things for a certain premium, (*conventio de rebus tuto aliquid transferendis pro certo premio*.) *Styppmannus, pars 4, c. 7, n. 262, p. 453. Emerig. Tr. des Assur. ch. 1, pr.*

A voyage insured. *Independenter se habet assecuratio a viaggio navis*; the voyage insured is a distinct thing from the voyage of the ship. *Casaregis, Disc. 67, n. 5, 31. 3 Kent's Com. 318, note.*

The old European writers take notice that this is not a Latin word, that is, not purely so. *Styppman. par. 4, c. 7, n. 267, p. 454. Kuricke, Diatrib. de Assec. p. 829.*

ASSECURATOR. L. Lat. [from *assecurare*, q. v.] In maritime law. An insurer, (*aversor periculi*.) *Loccen. de Jur. Mar. lib. 2, c. 5, s. 10.*

ASSEDATION. In Scotch law. A setting or letting for hire; another name for a *tack* or lease. *1 Forbes' Inst. part 2, b. 2, c. 4, tit. 4, § 6. Ersk. Inst. b. 2, tit. 6, § 20.*

ASSEMBLY, UNLAWFUL. [L. Lat. *illicita congregatio*.] In criminal law. The assembling of three or more persons together to do an unlawful act, who separate without actually doing it, or making any

motion towards it. 3 *Inst.* 176. 4 *Bl. Com.* 146. *Cowell.*

Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and excite alarm and consternation in the neighborhood.* 4 *Steph. Com.* 278. *Wharton's Am. Crim. Law*, 523. See *Id.* book 5, ch. 4.

ASSENER. L. Fr. To assign. *Kelham.* See *Assigner.*

ASSENT. [Lat. *assensus*, from *assentior*, from *ad*, to, and *sentire*, to think.] Agreement to, or approval of an act or thing done; as *consent* is agreement to a thing to be done, or about to be done. See *Consent.* The royal assent, in England, is the approval, by the sovereign, of an act which has passed both houses of parliament. 1 *Bl. Com.* 184. The assent of the president of the United States is expressed, in similar cases, by the word "*approved*."

The distinction between *assent* and *consent*, has been noticed by so early a writer as Britton, and seems to be well established in modern lexicography, but is not uniformly observed. Webster makes *assent* to be the agreement to an abstract proposition; and *consent*, an agreement to some proposal or measure which affects the rights or interests of the consenter. But this distinction does not appear to be recognized in law.

ASSENTER. L. Fr. To assent. Distinguished by Britton from *consenter*, to consent. *Britt.* c. 92.

ASSEOUR. L. Fr. An assessor. *Kelham.*

ASSER, *Asseer*, *Asseoir*. L. Fr. To settle or fix; to ascertain or assess. *Kelham.*

ASSERTA. L. Lat. In old English law. Assart; an assart. *Quandam assertam simul cum communia turbaria*; a certain assart, together with a common of turbary. *Yearb.* M. 7 Edw. III. 1.

ASSERTARE. L. Lat. In old English law. To assart. *Assertatum*; assarted. *Reg. Orig.* 257. See *Assart.*

ASSETERE. L. Fr. Assart; cleared land. *Le comen passa ove l'asserte.* *Yearb.* M. 7 Edw. III. 3.

ASSES, *Asses*. L. Fr. Enough; an equivalent; satisfaction or compensation. *Il est tenu de faire asses a la feme, de ses damages*; he is bound to make satisfaction to the woman, for her damages. *Britt.* c. 103.

ASSESS. [L. Lat. *assidere*, (q. v.) L.

Fr. *asser*, *asseer*, *asseoir*.] To adjust or proportion.

To fix or settle a sum to be levied or paid. See *infra*.

To rate or fix the proportions of a tax which each person, of several liable to it, has to pay; to apportion a tax among several subject to it; to apportion a tax according to a supposed relation between burden and benefit. See *Assessment*.

To impose a pecuniary payment upon persons or property; to tax.

To value, in order to tax.

* * The terms to *assess*, (*assidere*) and to *tax*, (*tazare*), were anciently used in close connection, as expressive of nearly the same idea. *Assidere*, *tazare et levare*; to assess, to tax and to levy. *Reg. Orig.* 188. 1 *Ld. Raym.* 147. The damages in a cause were said to be *assessed* and *taxed*, (*damna assessa et taxata*.) *Keilw.* 83. The jury in a cause were frequently said to *tax* the damages. *Yearb.* H. 9 Hen. VI. 21. M. 19 Hen. VI. 86. Afterwards, a distinction was made; the jury being said to *assess* the damages, and the court, to *tax* the costs. And this distinction has been preserved to the present time. The radical idea of both words, however, continued to be the same, viz. an *authoritative imposition*, involving the further idea of *adjustment* or *proportion*; the damages being proportioned to the injury sustained, and the costs to the services rendered.

A similar connection between the terms has been preserved in their application to financial subjects. The "taxes" of a city or town are constantly said to be "*assessed*;" land is said to be "*assessed* for taxes;" a person is said to be "*assessed*," (taxed) a certain amount. See 1 *N. Y. Rev. Stat.* [387,] *et seq.* Part 1, chap. xiii. tit. 1, 2. Strictly, however, "to assess" signifies "to value, for the purpose of taxation," and as preliminary to it. Property is "*assessed*" (that is, described and valued) by the town assessors, and "*taxed*" by the county supervisors. *Id.* [395,] § 33. *Ruggles*, J. 2 *Comstock's R.* 69.

ASSESE, *Asses*. L. Fr. Assessed; affected. *Stat. Westm.* 1, c. 18.

ASSESSMENT. [from *assess*, q. v.] An adjustment or proportioning of one thing to another.

The fixing or settling of a sum to be levied or paid, according to a certain proportion.

The adjustment of the proportions of a

tax to be levied; the apportionment of a tax among several subject to it. See *infra*.

Taxation in general; authoritative imposition of a sum or sums to be paid. See *Assess*.

Valuation of property for the purpose of taxation, and as preliminary to it. See *Assess*.

Taxation for a special purpose or local object; local taxation, as distinguished from general taxation. Taxation on the principle of apportionment according to the relation between burden and benefit; or according to the benefit which each tax-payer is supposed to derive from the object on which the tax is expended.* 4 *Comstock's R.* 419.

A pecuniary imposition upon persons or property; a tax.

A special tax or imposition for a local object or purpose, as the opening, grading and regulating of a street in a city or town; a local tax apportioned according to a supposed relation between burden and benefit.* 4 *Comstock's R.* 419.

*. The term "assessment" is constantly used in two distinct senses; first, as descriptive of the *mode* or *process* of ascertaining the amount and proportions of certain pecuniary impositions upon persons and property; secondly, as descriptive of the *results* of such processes, viz. the *sums* of money so ascertained and required to be paid. In the former sense it may be compared with the term "taxation;" in the latter, with "tax."

The connection, in point of meaning, between the terms "assessment" and "taxation," is very close; and originally they seem to have imported the same thing. The term "taxation of damages," in the old books, had precisely the same signification with "assessment of damages," which was substituted in its place. See *Assess*, *Taxation*. In their modern application to financial subjects, there is a similar connection, and the terms are often used indifferently, to express the same idea, as in the expression "assessment of taxes," and others. A distinction, however, is sometimes made between them,—“assessment” being used as descriptive of the preliminary process of valuation, and “taxation,” of actual, specific imposition. See *Assess*. Another distinction made between the terms is one of subdivision; “assessment” being defined as a particular species of taxation, or taxation for a special purpose and upon a peculiar principle.

Between “assessment” and “tax,” in the sense of a *result*, i. e. a *sum* or *sums* of money specifically ascertained, imposed and required to be paid, there is also a distinction; the term “assessment” being used to denote a special and temporary imposition on the owners of property in certain localities, to defray the expense of improvements made in those localities, such as the opening of a street or road, the construction of a sewer, &c. In some states, it has, indeed, been held that the meaning of the words “tax” and “assessment” is the same, whether applied to the opening or to the paving of a street, and that, in either case, they are regarded as synonymous. 7 *Maryland R.* 517. In New-York, however, the distinction has always been judicially recognized. In the matter of the Mayor, &c., of New-York, (11 *Johas. R.* 77,) it was expressly held by the Supreme Court, that an “assessment” on the property of certain churches, for enlarging a part of a street in the city, was not a “tax,” within the meaning of an act exempting churches, &c. from being *taxed*; and the court took pains to distinguish between *taxes*, which it defined to be “burdens, charges or impositions, put or set upon persons or property, for public uses,” and an *assessment* to pay for opening a street, in a ratio to the benefit or advantage derived from it; which they held to be “no burden.” In *Bleecker v. Ballou*, (3 *Wendell's R.* 263, 266,) in which a tenant was sued, under a covenant to pay “all taxes, charges and impositions,” &c. for the amount of an assessment for pitching and paving a street, Savage, C. J. observed, —“There is no doubt that the assessment in question was not a *tax*; that being a sum imposed, as is supposed, for some public object.” It was held, however, to be included under the other words of the covenant. Both these cases were cited, and the distinction taken in them approved, in the subsequent case of *Sharp v. Spier*, (4 *Hill's R.* 76,) in which it was held that a power to sell for *taxes* did not authorize a sale for a mere *assessment* for benefit. Still, although not strictly *taxes*, street assessments have been held, in this state, to be lawful and constitutional impositions within the general power of taxation admitted to belong to the state. In the case of *The People v. Mayor, &c. of Brooklyn*, (4 *Comstock's R.* 419,) in which the cases were reviewed, the meaning of

the term "assessment," and the constitutionality of impositions under that name were considered at large in the Court of Appeals. In this case, *assessment*, (in the sense of a *process*;) was considered as the apportionment of a tax according to the benefit which each tax-payer is supposed to receive from the object on which the tax is expended; and the same word, in the sense of a *sum* imposed and required to be paid, was regarded as a local tax, apportioned according to the relation between burden and benefit. It was remarked by Ruggles, J., who delivered the opinion of the court, that the difference between general taxation and special assessments for local objects, requires that they should be distinguished by different names, although both derive their authority from the taxing power. They have always been so distinguished, and it is therefore evident that the word "tax" may be used, in a contract or in a statute, in a sense which would not include a "street assessment," or any other local or special taxation, within its meaning. Several cases are found in which it has been adjudged to have been so used. 4 *Comstock's R.* 432, 433.

ASSESSMENT OF DAMAGES. In practice. The fixing or settling by a court or jury, of the amount of damages to be paid by the defendant or defeated party in an action.

Assessment by the *court* is either made directly by the court itself, or more commonly through its clerk, master or prothonotary, to whom a cause is referred for that purpose. This proceeding takes place after judgments by default, in cases where the amount claimed by the plaintiff is a mere matter of calculation, not calling for the intervention of a jury, as in actions on bills of exchange and promissory notes. 1 *Tidd's Pr.* 570. 1 *Burr. Pr.* 372.

Assessment by a *jury* takes place either on the trial of a contested cause, at the time of giving the verdict; or on inquests, where a verdict is taken by default; or before the sheriff or under-sheriff, upon a writ of inquiry issued after judgment by default. 1 *Tidd's Pr.* 570, 573. 1 *Burr. Pr.* 375. See *Writ of inquiry*.

ASSESSOR. Lat. [from *assidere*, to sit by or with.] In the civil law. A person who sat with a judge or magistrate, for the purpose of assisting him with advice. *Dig.* 1. 22. 1, 2.

ASSESSOR. An officer chosen or appointed to assess property. See *Assess.*

ASSESSORES, Adessores. Lat. [plural of *assessor*, q. v.] In the civil law. Persons who sat with the Roman prætor, or other magistrate, for the purpose of assisting him with their advice in the decision of causes. *Dig.* 1. 22. *Cod.* 1. 51. *Cic. de Orat.* i. 37.

ASSESSORS. In Scotch and English law. Persons skilled in the law, appointed to advise and direct the decisions of the judges of inferior courts. *Bell's Dist. Brande.* The term and practice are both derived from the civil law. See *Assessores*.

ASSETS. [from Fr. *assez*, *assez*, enough.] Goods or lands in the hands of an executor, administrator or heir, *sufficient* (*assez*) to discharge the debts and legacies of the testator, intestate or ancestor, or some part thereof; or *sufficient* to charge the executor, administrator or heir, (that is, to make him liable,) to the extent of the property. *Cowell. Blount. Shep. Touch.* 496. *Lowell on Wills*, 38. 2 *Bl. Com.* 244, 510. 1 *Story's Eq. Jurispr.* § 531.—The real and personal property of a party deceased, which, either in the hands of his heir or devisee, or of his executor or administrator, is *chargeable* with the payment of his debts and legacies. 2 *Steph. Com.* 244, note (s). *P. Cyclopaedia*.—In an accurate and legal sense, all the personal property of the deceased which is of a saleable nature, and may be converted into ready money, is deemed *assets*. But the word is not confined to such property; for all other property of the deceased which is chargeable with his debts or legacies, and is applicable to that purpose, is, in a large sense, *assets*. 1 *Story's Eq. Jur.* § 531.

The property or effects of a bankrupt or insolvent, applicable to the payment of his debts.

In a large sense, the property or effects of any individual, company or corporation, available for the payment of his or its liabilities.* These last are rather the popular than the legal significations of the term.

Assets are either *personal*, *real*, *legal* or *equitable assets*, (qq. v.)

* * This word presents a striking instance of entire loss of original and strictly appropriate meaning, and the acquisition of a new and opposite sense. *Assets*, according to the oldest definitions, once literally signified what its etymology indicates,—property of a deceased person *sufficient* (*assez*) to pay his debts and legacies. *Termes de la Ley.* So, where land descend-

ed to an heir was as much in value as other land sold by the ancestor, it was for that reason called *assets per descent*, that is, equivalent, (*quod tantundem valet.*) *Bract.* fol. 376 b, 377. *Co. Litt.* 374 b. 2 *Bl. Com.* 244. The word having become fixed in its application to the property of deceased persons, the idea of *sufficiency* was gradually made subordinate to the more important one of *applicability*, until finally, the word came to be descriptive of the legal character or quality of the property, rather than its amount. See *Germey's Case*, 1 *Leon.* 87, case cvii. This very strikingly appears in the expression in 10 *Mod.* 324,—"let the assets be never so small." The later and modern definitions have qualified the meaning of the word to suit this change. Thus, *Sheppard* defines it to be "goods or chattels sufficient to pay the debts; or some part thereof." *Shep. Touch.* 496. So, *Stephen*,—"sufficient (to some extent at least) to satisfy the debt." 1 *Steph. Com.* 396. *Blackstone* retains the idea of *sufficiency*, but gives it a new application, viz. to the liability of the executor, &c. 2 *Bl. Com.* 510. See the definition *supra*. Other modern definitions have dropped the idea of *sufficiency* entirely; and *assets* is now constantly used to signify any property, estate or fund applicable to the payment of debts, though quite insufficient in amount or value for the purpose. The entire departure from original meaning appears very palpably in the common expression, "an insolvent's or bankrupt's assets."

ASSETS ENTRE MAINS. L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts. *Termes de la Ley.* 2 *Bl. Com.* 510. 1 *Crabb's Real Prop.* 23, § 31. "Executors must answer all certain duties of the testator, having sufficient of his chattels, which we call *assets entre mains*, to do it." *Finch, Law*, b. 2, c. 15. Called in modern law, *personal assets*, (q. v.)

ASSETS PER DESCENT. L. Fr. Assets by descent. Lands in the hands of an heir chargeable with the payment of the debts of the ancestor; otherwise called *real assets*, (q. v.) Thus, where a man has bound himself and his heirs in any obligation in writing, for the payment of a certain sum, and he dies seised of lands in fee simple which descend to his heirs, these lands, when in the hands of the heir, will be liable to the payment of that sum. 2 *Bl. Com.* 243, 244, 340. 1 *Steph. Com.* 396,

397. *Co. Litt.* 374 b. In other words, assets by descent are liable to those debts only which are secured by specialty, as bond or covenant binding the party's heirs; but assets in the hands of executors and administrators are liable to all debts. *Brande.*

ASSECURANTIE. Assurance or insurance. *Loccen. de Jur. Mar.* lib. 2, c. 5, § 1.

ASSEWIARE. L. Lat. In old records. To draw or drain out water from marshy grounds. *Cowell. Blount.*

ASSEZ, Ascez, Assetz, Assietz, Asces. L. Fr. Enough; sufficient. *Kelham. Assez offer*; enough to do. *Id.* See *Asces.*

ASSI'A. A contraction of *Assisa*, (q. v.) 1 *Instr. Cler.* 9.

ASSID'. An abbreviation of *Assidunt*. 1 *Instr. Cler.* 9. See *Assidere*.

ASSIDERE. Lat. [from *ad*, by, and *sedere*, to sit.] In the Roman law. To act as an assessor; to perform the office of an assessor. *Liberti assidere possunt*; freed-men may act as assessors. *Dig.* 1. 23. 2. See *Assessor*.

ASSIDERE. L. Lat. In old practice. To assess; to fix, settle, define, determine, or reduce to a certainty, either in point of time, number, amount, quantity, quality, &c. *Assidere, taxare et levare*; to assess, tax and levy. *Reg. Orig.* 188. 1 *Ld. Raym.* 147. *Assiderunt et taxarunt*; they assessed and taxed. *Keilw.* 83. *Assessus*; assessed. Properly *assius*, (q. v.) *Assidenda*; to be assessed. 1 *Stra.* 201. *De auxilio assidendo*; for assessing an aid. *Mag. Chart. Joh.* c. 14. In the old Latin records of verdicts in civil actions, the literal translations of which are still used, the entry was, after stating that the jury found for the plaintiff, "*et assidunt damna*," (and they assess the damages) at so much; and then the judgment of the court was given for the damages "*per juratores predictos in forma predicta assessa*;" (by the jurors aforesaid in form aforesaid assessed.) *Towns. Pl.* 494.

To assign or appoint a time. *Et quod tenenti assidat diem certum*; and that he assign to the tenant a certain day. *Fleta*, lib. 6, c. 6, § 16.

To ASSIGN. [Lat. *assignare*; L. Fr. *assigner*, qq. v.] In conveyancing. To make or set over to another; to transfer; as to assign property, or some interest therein. *Cowell.* 2 *Bl. Com.* 326. To transfer by writing. 26 *Mississippi R.*

577. To transfer by delivery. 11 *Barbour's R.* 637—639. To transfer persons, as a sheriff is said to assign prisoners in his custody. See *Assignee, Assignment*.

In practice. To appoint, allot, select or designate for a particular purpose, or duty. Thus, in England, justices are said to be "assigned to take the assizes," "assigned to hold pleas," "assigned to make gaol delivery," "assigned to keep the peace," &c. *Stat. Westm.* 2, c. 30. *Reg. Orig.* 68 b, 69. 3 *Bl. Com.* 58, 59, 352. 1 *Id.* 351. *Cowell.* So, a court is said to "assign a prisoner counsel."—To appoint a time; as, to assign a day.

To point at, or point out; to set forth, or specify; to mark out or designate; as to assign errors on a writ of error; to assign breaches of a covenant. 2 *Tidd's Pr.* 1168. 1 *Id.* 686. To assign false judgment, in old practice, was to declare how and where the judgment was unjust. *Old N. Br.* 17. To assign waste was to show wherein especially the waste was committed. *Reg. Orig.* 71 b, nota. To assign a perjury is a phrase still used. *Stat.* 9 *Ric.* II c. 3.

In the phrase "to assign dower," the word is used in the two last senses; the widow's portion being set or marked out, that is, designated by metes and bounds, or other description, and so allotted or appointed for her use. But it has not the sense of *transfer*, as the estate does not pass by the assignment. 4 *Kent's Com.* 69. See *Assignment of Dower*.

ASSIGN. [L. Fr. *assigne*; L. Lat. *assignatus*.] An assignee; a person to whom property or a right or interest is transferred by another. 1 *Str.* 460. 13 *East*, 565. 1 *Curtis' R.* 199. Now rarely used. The plural *assigns* is still retained in deeds, bonds and other instruments. See *Assignee, Assigns*.

ASSIGNABLE. That may be assigned or transferred; transferable; negotiable, as a bill of exchange. *Comb.* 176. *Story on Bills*, § 17.

ASSIGNARE. Lat. [from *ad*, to, and *signare*, to mark.] In the civil law. To assign, allot, or appoint. *Assignare libertum*; to assign a freedman to a particular child. *Inst.* 3. 9. pr. *Dig.* 38. 4. *Id.* 50. 16. 107.

ASSIGNARE. L. Lat. In old practice and conveyancing. To assign; to transfer or make over. *Cui terram illam dare vel assignare voluerit*; to whom he

will give or assign that land. *Bract.* fol. 17 b. *Id.* fol. 18 b. *Fleta*, lib. 3, c. 14, § 6. *Dyer*, 54, (Fr. ed.)

To assign; to allot, appoint, or designate. *Assignavimus vos justitios nostros, ad inquirendum*; we have assigned you our justices to make inquiry. *Reg. Orig.* 123. *Assignavimus—ad itinerandum*; we have assigned to itinerate. *Bract.* fol. 109. See *Clerke's Praz. Cur. Adm.* tit. 15.

To assign; to mark out, set off, allot or set over, as a widow's dower. *Vir dotem dat et constituit, hæres autem tantum dotem assignat*; the husband gives and establishes dower; the heir only assigns it. *Bract.* fol. 300 b. *Infra quos assignetur ei dos*; within which her dower shall be assigned her. *Mag. Chart.* c. 7.

ASSIGNATI. L. Lat. [plur. of *assignatus*, q. v.] In old English law. Assigns; assignees. *Bract.* fols. 20, 21, 37 b. See *Assigns*.

ASSIGNATIO. Lat. and L. Lat. [from *assignare*, q. v.] In civil and old English law. An assigning or assignment. *Inst.* 3. 9. *Dig.* 38. 4. 1. 6. *Assignatio dotis*; assignment of dower. *Bract.* fol. 314. *Ex assignatione*; from, or on the assignment. *Reg. Orig.* 73, 75 b. *Dyer*, 206 b. *Per assignationem*; by the assignment. 1 *Ld. Raym.* 367.

ASSIGNATION. In Scotch law. An alienation, transfer or conveyance, particularly of a debt or movable subject; an assignment.* *Ersk. Inst.* b. 2, tit. 7. *Id.* b. 3, tit. 5. By assignation, in proper speech, is understood a written deed of conveyance by the proprietor to another, of any subject not properly feudal. *Id. ibid.* § 1. It is distinguished from a *disposition* which is a conveyance of heritage. *Bell's Dict.*

ASSIGNATOR. Lat. [from *assignare*, q. v.] In the civil law. An assigner or assignor; one who assigns. *Dig.* 38. 4. 3. 1.

ASSIGNATUS. Lat. and L. Lat. [from *assignare*, q. v.] In old English law. An assignee, or assign. *Towns. Pl.* 28. *Eidem B. vel ejus assignato*; to the said B. or his assign. *Fleta*, lib. 2, c. 64, § 21. *Id.* lib. 10, c. 3, § 1. *Assignatus utitur jure auctoris*. An assignee uses the right of his principal; an assignee is clothed with the rights of his principal. *Halk. Maz.* p. 14. *Broom's Maz.* [350—362.]

A person assigned or appointed to a particular duty. *Ad placita tenenda assignatis*; assigned to hold pleas. *Reg. Orig.* 68 b.

In the civil law. A person assigned or set over to another, as a freedman to a particular child. *Inst.* 3. 9. *Dig.* 38. 4.

ASSIGNAY, *Assigney*. O.Sc. In Scotch law. An assignee. "His airis and assignais." 1 *Pitcairn's Crim. Trials*, part 2, p. 342. "Aires or assigneya." 5 *Bell's Appeal Cases*, 83. *Assignay* (L. Fr.) occurs in *Yearb. M.* 7 Edw. III. 5.

ASSIGNEE, (and formerly,) ASSIGN. [L. Fr. *assigne*; L. Lat. *assignatus*; Scotch, *assigny*.] A person to whom some right or property is assigned, transferred or made over by another; or, according to the old definition, "he to whom a thing is appointed or assigned to be used, paid or done." *Termes de la Ley*. *Cowell*. Assignees are either by deed, or in law. See *infra*. When a statute speaks of an assignee, it is to be intended of such complete assignee, who has all the ceremonies and incidents requisite by the law to such character, not taking away any form or circumstance which the law requires. *Dwarries on Stat.* 773, (9 Phil. Law. Lib.)

In old law. A person deputed or appointed by another to do any act, or perform any business. *Blount*. An assignee, however, was distinguished from a deputy, being said to occupy a thing in his own right, while a deputy acted in right of another. *Perkins*, tit. *Grants*. *Cowell*. Deputy is but as a shadow of the officer, but assignee is in his own right, and he shall answer for himself. *Brownl.* part 2, 337.

Assignee by deed, (in deed or in fact,) is the person to whom some right, title or property is made over, or assigned by another by some deed or instrument in writing, which is hence called an assignment, and the party assigning the assignor.* *Termes de la Ley*. *Cowell*.

Assignee in law is the person to whom some right or property is transferred, or upon whom it devolves by the mere operation of law, and without any express conveyance. In this sense, an executor is the assignee of the testator; an administrator, of the intestate. *Dyer*, 6. *Hob.* 9 b. *Termes de la Ley*. *Cowell*. See *Assigns*.

ASSIGNEMENT, *Assignment*. L. Fr. *Assignment*; an assignment. *Britt.* c. 103. *Yearb. M.* 2 Edw. III. 5.

ASSIGNER, *Assiner*, *Assener*. L. Fr. To assign. *Kelham*. *Yearb. M.* 2 Edw. II. 20. *Assigner faux serement*; to assign perjury. *Id.* M. 8 Edw. III. 43. *Id.* M. 7 Edw. III. 5. *Dyer*, 45 b, 54.

VOL. I.

ASSIGNMENT. [L. Fr. *assignment*, L. Lat. *assignatio*.] In conveyancing. A transfer or making over by one person to another, of any property real or personal, in possession or action, or of any estate or right therein.*

A transfer or making over to another of the right one has in any estate [in lands or tenements;] but it is usually applied to an estate for life or years. 2 *Bl. Com.* 326. —A transfer of one's whole interest in any estate. *Watkins on Conv.* b. 2, ch. ix. —A transfer of some particular estate or interest in lands; the transfer of a term for years. *Cruise's Dig.* tit. xxxii. (Deed,) ch. vii. s. 15. Dr. Wooddeson restricts the proper meaning of assignment, to "the transfer of the interest which any one has in the unexpired residue of a term or estate for years." 2 *Wooddes. Lect.* 170, 171. Mr. Stephen has otherwise modified the definition of Blackstone, making an assignment to be "properly a transfer or making over to another, of one's whole interest [in lands or tenements,] whatever that interest may be; but it is usually applied to express the transfer of an estate for life or years." 1 *Steph. Com.* 485.

A transfer or making over by one person to another, of a chattel personal, equitable interest or chose in action; as of an article of merchandise, or household furniture, a ship, a copy-right or patent right, a bond, a note, and the like. 2 *Steph. Com.* 104. *Walk. Conv.* b. 2, ch. ix.

A transfer of a bill of exchange, promissory note, or check, by mere delivery or by writing. A transfer by indorsement, general or special.* *Chitty on Bills*, (*Perkins'* ed. 1854,) 8, 11, 12, 225, 259, note 3, and cases cited *ibid.* 11 *Barbour's R.* 637 —639. 26 *Mississippi R.* 577. *Burrill on Assignments*, (2d ed.) p. 3, notes, 1, 2.

A transfer of a bill, note or check, not negotiable. *Id. ib.* note 1.

A transfer or making over by a debtor, of all or a part of his property and effects, to one or more assignees, in trust for the benefit of his creditors. 2 *Story's Eq. Jur.* ch. 28. *Burrill on Assignments*. See *Voluntary assignment*.

The instrument or writing by which a transfer of property is made. In real estate conveyancing, an assignment is a species of deed, and is classed by Blackstone and other writers, among common law conveyances of a secondary or derivative character. 2 *Bl. Com.* 310, 326. In the

transfer of personal property, the instrument of assignment is frequently of an equally formal character, though it is more commonly termed a *bill of sale*, (q. v.) 2 *Steph. Com.* 104. In some cases, however, it is made in the form of a mere note or memorandum, and, in the case of a negotiable bill or note, the assignment is effected by the mere endorsement of the assignor's name. *Id. ibid.* 105. *U. S. Digest*, Assignment.

In an assignment of real estate, the operative words are "assign, transfer and set over;" though usually the word "grant" is inserted; but any words which show an intention to pass the property, will amount to an assignment. *Watkins on Conv.* (by Preston,) b. 2, ch. ix. In assignments of chattels, the ordinary words are, "grant, bargain and sell, assign, transfer and set over." *Id. ibid.*

ASSIGNMENT OF DOWER. [L. Lat. *assignatio dotis*.] The marking out and laying off of one third part of a man's lands as the dower of his widow; designating it by metes and bounds, or other sufficient description, and allotting it to her as her portion.* This assignment may be made *in pais*, by parol, by the heir or devisee, or other persons seised of the lands subject to dower; or it may be made by a course of judicial proceeding, where a voluntary assignment is refused. But the estate does not pass by the assignment, the dowress being in intestment of law, of the seisin of her husband; and this is the reason that neither livery nor writing is essential to the validity of an assignment *in pais*. 4 *Kent's Com.* 63, 69.

ASSIGNMENT OF ERRORS. In practice. The statement of the plaintiff's case on a writ of error, setting forth the errors complained of; corresponding with the declaration in an ordinary action. 2 *Tidd's Pr.* 1168. 3 *Steph. Com.* 644.

ASSIGNOR. [Lat. *assignator*; Scotch, *cedent*.] One who makes an assignment; one who assigns or transfers to another.

ASSIGNS. [L. Fr. *assignes*; L. Lat. *assignati*.] In conveyancing. A word nearly or quite synonymous with *assignees*, and formerly sometimes so written; both words probably being only different pronunciations of the Fr. *assignes*. *Termes de la Ley*. Its use is now confined to conveyancing, (as in the common expressions "heirs and assigns," "executors, administrators and assigns,") in which branch of

the law it has been employed from a very remote period. See *infra*.

Where a party in a deed covenants for himself, his executors, administrators and assigns, the word *assigns* means any person to whom the property or interest described in the deed, may happen at any future time to be assigned, either by deed or by operation of law. *Holthouse*. Under the word *assigns*, are included not only assignees, properly so called, but executors, and administrators, the assignee of an assignee *in perpetuum*, the heir of an assignee, the assignee of an heir, the assignee of an assignee's executor, and a devisee. *Hob.* 9 b. *Co. Litt.* 384 b. *Plowd.* 287, 288. 5 *Co.* 16, 17 b. 2 *Show.* 39, 57. *Godbolt*, 161. 3 *Leon.* 212. 1 *P. Wms.* 73. But not involuntary assignees, as assignees in bankruptcy. 3 *M. & S.* 353. "*Assigns*," in a policy of insurance, means one who becomes the assignee of the policy, with the assent of the office, not any one who takes an interest in the property from the insured. 1 *Curtis' R.* 193, 198.

* * The word *assigns* occurs in most of the forms of charters or deeds in Bracton and Britton, with various modifications no longer used. Thus,—"*tali, et hæredibus suis, et assignatis, et hæredibus assignatorum*;" to such a one, and his heirs and assigns, and the heirs of his assigns. *Bract.* fol. 37 b. "*Tali, et hæredibus suis et assignatis, et eorum hæredibus, et assignatis assignatorum et hæredibus eorum*;" to such a one, and his heirs and assigns, and their heirs, and the assigns of his assigns, and their heirs. *Id. ibid.* So,—"*à ses heires, et à ses assignes, et as assignes des assignes*;" to his heirs and to his assigns, and to the assigns of his assigns. *Britt. c.* 37, fol. 96. *Id. c.* 39, fol. 100 b. The introduction of this word into deeds, as a necessary word of form, probably grew out of the ancient doctrine that if a man's assigns were not specified in the purchase deed, he was not empowered to aliene. *Mirr. c.* 1, § 3. *Bract.* fol. 17 b. 2 *Bl. Com.* 289. 1 *W. Bl.* 134. This appears from Bracton to have been particularly the case with bastards, who could not assign land given to them, unless this were allowed by the terms of the gift, (*nsi hoc permissum esset per conditionem, et per modum donationis*); that is, by express words denoting liberty of assignment; and the same author remarks, as worthy of notice, that this kind of gift was first invented in favor of that

description of persona. *Bract.* fol. 20 b. (*Et notandum quod in favorem bastardorum primò inventa fuerit donatio.*) Fleta more explicitly says, *et ideo in favorem bastardorum inventa fuit assignatio et constituta.* *Fleta*, lib. 3, c. 10, § 1.

ASSIGNY. In Scotch law. An assignee. 1 *Forbes' Inst.* part 3, b. 1, c. 1, tit. 2, sect. 1.

ASSILIRE. Lat. In feudallaw. To assault; to attack; to offer violence to. *Feud. Lib.* 1, tit. 5, § 1. *Hotom. de Verb. Feud.*

ASSIS, Assise, Assys. L. Fr. Fixed, set, appointed; affeered, assigned; situated. *L. Fr. Dict. Kelham.*

ASSISA. See *Assisus*.

ASSISA. L. Lat. [*L. Fr. assise, assis.*] In old English and Scotch law and practice. An assise; a species of jury or inquest. Called by Fleta, *recognitio xii hominum juratorum*; a recognition of twelve sworn men. *Fleta*, lib. 4, c. 1, § 7. *Skene de Verb. Signif.* 1 *Pitt. Crim. Trials*, part 2, p. 55. *Assisa venit recognitura*, or *ad recognoscendum*; the assise comes, or came to recognise. *Litt.* sect. 234. 7 *Co.* 1. 9 *Id.* 1. Distinguished from the common *jurata*, or jury; though it was often turned into it. *Vertitur assisa in juratam*; the assise is turned into a jury. *Bract.* fol. 210 b. *Fleta*, lib. 4, c. 16. 3 *Bl. Com.* 402. *Cadit assisa, nec est capienda ut assisa, sed vertitur in juratam*; the assise falls, nor is it to be taken as an assise, but is turned into a jury. *Bract.* fol. 192 b. *Videndum erit utrum assisa capiatur in modum assisse vel in modum juratae*; it must be considered whether the assise be taken in the manner of an assise, or in the manner of a jury. *Id.* fol. 215 b. See *Assise*. Britton has a chapter entitled "*De assises tournes en jures.*" *Britt.* c. 51. *Magna assisa*; the grand assise, (q. v.) Distinguished by Bracton from the *inquisitio patriæ*. *Bract.* fol. 15 b.

A species of writ or real action. *Assisa nova disseysinæ*; an assise of novel disseisin. *Bract.* lib. 4, tract. 1. *Assisa ultima presentationis*; an assise of darreign presentment. *Id.* lib. 4, tract. 2. *Fleta*, lib. 4, c. 1, §§ 4, 5. *Assisa cadere*; to fail in an assise. See *Cadere*. This kind of assise is frequently termed by Glanville, *recognitio*. 1 *Reeves' Hist. Eng. Law*, 186.

A court, or the sittings of a court. *Usque ad primam assisam*; until the first assise. *Reg. Orig.* 196 b. *Bract.* fol. 179. *Assisa generalis* is mentioned by Sir William Blackstone as an old name of parliament,

on the authority of Glanville, whom he cites. *Glanv.* lib. 9, c. 10. 1 *Bl. Com.* 148, note (g). The same passage, however, is cited by Spelman as an illustration of the use of the word *assisa* in the sense of a statute or ordinance; which is confirmed by the authority of Bracton. See *infra*.

A statute, ordinance or law. *Per nullam assisam generalem*; by no general law. *Glanv.* lib. 9, c. 10. *Assise, statuta et jurata*; assises, ordained, and sworn [to be kept.] *Bract.* fol. 120 b. *Leges et constitutiones, et assisas in regno provisas, et approbatas, et juratas.* *Id.* fol. 55 b. See 1 *Reeves' Hist. Eng. Law*, 86, 215. *Skene de Verb. Signif.* *Spelman*, voc. *Assisa*.

A fixed or specified time, (*tempus definitum*). *Glanv.* lib. 13, c. 32. *Spelman*.

A fixed or certain number. *Spelman*.

A specified or determinate quantity, quality, weight, measure, price, &c., required by law in certain commodities. *Spelman*. *Skene de Verb. Signif.* See *Assisa venalium*.

A tax or tribute, as fixed by law. *Spelman*.

A fine or mulct. *Id.*

ASSISA ARMORUM. L. Lat. Assise of arms. A statute or ordinance requiring the keeping of arms for the common defence. *Hale's Hist. Com. Law*, c. 11.

ASSISA DE CLARENDON. The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were accused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile. *Bract.* fol. 136. *Co. Litt.* 159 a. *Cowell*. This must not be confounded with the *Assises of Clarendon*, as the famous constitutions of that name were sometimes called. See *Clarendon*.

ASSISA DE MENSURIS. L. Lat. Assise of measures. A common rule for weights and measures, established throughout England by Richard I., in the eighth year of his reign. *Hale's Hist. Com. Law*, c. 7.

ASSISA FORESTÆ, or DE FORESTA. L. Lat. Assise of the forest. A statute or ordinance concerning the royal forests, passed in the thirty-fourth year of Edward I. *Co. Litt.* 159 b. Otherwise called *Ordinatio Forestæ*. 2 *Reeves' Hist. Eng. Law*, 106, 107. See *Ordinatio Forestæ*.

ASSISA FRISCÆ FORTIÆ. L. Lat. Assise of fresh force. *Reg. Orig.* 16 b. See *Assise of fresh force*.

ASSISA MORTIS ANTECESSORIS. L. Lat. Assise of mort d'ancestor. *Bract.* lib. 4, tract. 3. *Fleta*, lib. 4, c. 1; lib. 5, c. 1. Called also *assisa de morte antecessoris*. See *Assise of mort d'ancestor*.

ASSISA NOVÆ DISSEYSINÆ. L. Lat. Assise of novel disseisin. *Bract.* lib. 4, tract. 1. *Fleta*, lib. 4, c. 1. Called also *assisa de nova disseisina*. See *Assise of novel disseisin*.

ASSISA PANIS ET CEREVISIÆ. L. Lat. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III. containing regulations for the sale of bread and ale; sometimes called the statute of bread and ale. *Co. Litt.* 159 b. 2 *Reeves' Hist. Eng. Law*, 56. *Cowell.* *Bract.* fol. 155. *Barringt. Obs. Stat.* 52. The particular provisions of this statute, which are very minute, may be found in Britton and *Fleta*. *Britt.* c. 30. *Fleta*, lib. 2, cc. 9, 11. Spelman considers the statutes passing under the names of *assisa panis*, *assisa vini et cervisiæ*, &c., to belong to an earlier period.

The power or privilege of assising or adjusting the weights and measures of bread and beer. *Cowell.*

ASSISA ULTIMÆ PRÆSENTATIONIS. L. Lat. Assise of darrein presentment. *Bract.* lib. 4, tract. 2. *Fleta*, lib. 4, c. 1; lib. 5, c. 11. Called also *assisa de ultima præsentatione*. See *Assise of darrein presentment*.

ASSISA UTRUM. L. Lat. Assise of utrum. *Bract.* lib. 4, tract. 4. *Fleta*, lib. 5, c. 20. See *Assise of utrum*.

ASSISA VENALIUM. L. Lat. The assise of saleable commodities, or of things exposed for sale. The regulation of the sale of certain articles, (usually the common necessities of life,) by public authority; defining or fixing the quantity, weight, quality, &c., to be sold for a certain price. A phrase formerly in frequent use in old English, Scotch and continental law. *Spelman*, voc. *Assisa*.

ASSISATUM. L. Lat. In old English law. Fixed or established. *Spelman*.

Ordained, (*statutum*.) *Skene de Verb. Sig.* voc. *Assisa*.

ASSISE. L. Fr. Situated. *De la ville ou son castle est assise*; of the town where his castle is situated. *Stat. Westm.* 1, c. 7. See *Assisus*.

ASSISE, Assize. [L. Fr. *assise*, *assis*; L. Lat. *assisa*, from *assidere*, to sit together, according to Coke; or from Fr. *assis*, placed,

put, settled, fixed, established, according to Spelman.] In English law and practice. A species of jury, or inquest. *Litt. sect.* 234.

A species of writ, or real action. *Id.*

The proceedings in court upon a writ of assise. *Co. Litt.* 159 b.

The verdict or finding of the jury in a writ of assise. 3 *Bl. Com.* 57.

A court, or the sittings of a court. *Spelman*.

An ordinance, or statute. *Id.*

Any thing fixed, or reduced to a certainty, in point of time, number, quantity, quality, weight, measure, &c. *Id.*

A tax, or tribute. *Id.*

A fine. *Id.* See *Assisa*.

These various significations of the word *assise*, which is called by Littleton (sect. 234) *nomen æquivocum*, will be considered more at large under the following heads:

ASSISE. A species of jury; a certain number of men, usually twelve, summoned to try a cause, and who *sat together* for that purpose.* *Fleta*, lib. 4, c. 1, § 7. *Co. Litt.* 153. 3 *Bl. Com.* 185. Lord Coke derives the word, in this sense, from *assidere*, to sit together. *Co. Litt. ub. sup.* Spelman derives it from *assisus*, fixed or settled, because the number of jurors, which anciently was uncertain and indefinite, was, by the law establishing the assise, fixed and defined (*assisus et definitus*); and in this he is supported by Skene, (voc. *Assisa*.) See *Ersk. Inst.* b. 4, tit. 4, § 92. The idea of certainty is also prominently presented by the definition of the Grand Coustumier of Normandy, though it is a certainty of time and place, rather than of persons. "*Assise* is an assembly of knights and other substantial men, with the bailiff or justice, in a certain place, and at a certain time appointed." *Grand Coust.* c. 24, cited in *Cowell*. Mr. Reeves, on the authority of Glanville, says a jury was called an *assise* from the *assisa*, or law by which the application of this trial was ordained. 1 *Reeves' Hist. Eng. Law*, 84.

* * The *assise*, properly so called, was introduced by Henry II. as a substitute for the *duellum* or *battel*, and was established particularly for the trial of questions of seisin of land. *Glanv.* lib. 2, c. 7. It was otherwise termed *recognitio*, and the persons composing it *recognitores*. 1 *Reeves' Hist. Eng. Law*, 86. The common jury, (*jurata patriæ*, or *inquisitio patriæ*,) had been previously in use, and was commonly resorted to as a mode of trial, in other in-

stances than those provided for by the law of Henry II. *Id. ibid.* The distinction between an *assise* and a *jury* is clearly drawn in the old books, and was a very common point of learning in the reign of Henry III. It was substantially this:—an *assise* was the regular mode of trying the main issue in questions of seisin; a *jury* was used to determine any incidental question arising in the cause, upon which issue might be taken, as where an exception was taken by the tenant *out of the assise*, as it was called. Thus, if the tenant at once denied that he had committed any disseisin, he simply put himself upon the *assise*, and the *assise* proceeded, as they called it, in *modum assise*, (in the ordinary manner of an *assise*), that is, upon the simple question of disseisin. *Bract. fol. 184 b, 215.* But if the tenant took an exception upon some collateral matter, as if he offered the common exception or plea that the demandant or plaintiff was a villein, this question was not triable by the *assise*, but by a common jury. *Id. fol. 192 b, 215.* It became, however, the practice to allow the *assise* itself to discharge the office of a jury in such cases, and it was then said, *assise cadit, or vertitur in juratam*, the *assise* falls or is turned into a jury, or *assisa capta est in modum juratae, et non in modum assise*; the *assise* is taken like a jury, and not like an *assise*. *Id. fol. 192 b, 210 b, 215, 283. Fleta, lib. 4, c. 11, § 12; cc. 15, 16.*

Assises were of two kinds, *grand* and *petite*. See *Grand assise, Petite assise*. In Scotch law, the jury in criminal cases is still technically called the *assise*, or *assize*, (O. Sc. *assysse, assyis, assyise*.) *Ersk. Inst. b. 4, tit. 4, § 92. P. Cyclopædia.* But in England, *assise*, in the sense of a jury of any kind, has become obsolete.

ASSISE. A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II., and having for its object to determine the right of possession of lands, and to recover the possession. 3 *Bl. Com.* 184, 185. According to Lord Coke, *assises* were used in England, time out of mind. 3 *Co. pref. v. vi.* This remedy, however, was only applicable to two species of injury by ouster, viz., abatement, and a recent, or novel disseisin. 3 *Bl. Com.* 185. The principal *assises* were those of *novel disseisin, mort d'ancestor, darrein presentment*, and *utrum*. See *infra*.

These writs, according to Littleton, were

called *assises*, because by them the sheriff was ordered to summon a jury or *assise*, which was not expressed in any other original writ. *Litt. sect. 234. Co. Litt. 154 b, 159.* Cowell suggests three other reasons: first, because they settled the possession; secondly, because they were originally executed at a certain time and place, formerly appointed; and lastly, because they were tried most commonly by special courts *set* and appointed for that purpose. *Assises* have been abolished in England with other real actions.

ASSISE. The whole proceedings in court upon a writ of *assise*. *Co. Litt. 159 b.* The verdict or finding of the jury upon such a writ. 3 *Bl. Com.* 57. These significations serve to explain the expression "to take the *assises*," (*ad assisas capiendas*), which is so common in the old books and statutes. Blackstone construes the expression "to take recognitions or *assises*," used in Magna Charta, (c. 12,) to mean, "to take (or receive the verdict of the jurors or recognitors in certain actions then called) recognitions or *assises*." 3 *Bl. Com.* 57. See *Id.* 59, 352.

ASSISE, Assize. A court; the sittings of a court. This is an ancient sense of the word. *Grand Coustum. Norm. c. 55*, cited in Cowell. *Bract. fol. 179. Reg. Orig. 197 b. Spelman.* The plural *assises* is still used in England to denote the sessions of the judges of the superior courts, holden periodically in each county, for the purpose of administering civil and criminal justice. See *Assises*. In some of the United States, also, while colonies of Great Britain, courts were denominated *assises*.

ASSISE, Assize. An ordinance, statute or regulation. Spelman gives this meaning of the word the first place among his definitions, observing that statutes were in England called *assises* down to the reign of Henry III. The *Assises of Jerusalem*, (q. v.) and the *Assises of Clarendon*, are prominent and early instances of the use of the word in this sense. It is used in the same sense by the earliest English writers. *Glanv. lib. 9, c. 10. Bract. fol. 120 b. Fleta, lib. 1, c. 17. Britt. cc. 30, 31.* The rules and regulations respecting the royal forests were called *assises* of the forest. The ordinance of 27 Henry II., obliging every man, according to his estate, to provide a determinate quantity of such arms as were then in use, in order to keep the peace, was called the *assise of arms*.

1 *Bl. Com.* 410, 411. 2 *Id.* 66. So, on the continent of Europe, statutes or royal ordinances were anciently called *assise*. *Spelman*, voc. *Assisa*. Coke's derivation from *assidere*, (to sit together, as a legislative assembly) seems to be recognised by *Spelman* as the origin of this signification of assise.

To this head also belong those ancient ordinances or statutes by which the price and sale of bread, ale and other necessities of life were regulated, called *assise venalium*. The most important of these was the assise of bread and ale, (*assisa panis et cerevisie*), the particulars of which are minutely given by Britton. *Britt.* c. 30. The assize of bread was retained in England until a late period, the power of regulating it in cities and towns being frequently given to the local authorities; but all statutes relating to the assize have been repealed by statutes 6 & 7 Will. IV. c. 37, and 3 Geo. IV. c. 106. 4 *Steph. Com.* 289, note (g). The custom of regulating the weight and price of bread by public ordinance, together with the term *assize of bread*, was adopted in some parts of the United States, and continued to be observed in the city of New-York down to a comparatively recent period, but is now disused.

ASSISE. Any thing reduced to a certainty in respect to time, number, quantity, quality, weight, measure, &c. *Spelman*.

A fixed time. *Glanv.* lib. 13, c. 32.

A fixed or certain number, as of a jury. See *supra*.

A fixed sum, as a tax, a fine. *Spelman. Lib. Nig. Scacc.* cited *ibid.* Rent of assise is a fixed or established rent of the freeholders and ancient copyholders of a manor, which cannot be departed from, or varied. 2 *Bl. Com.* 42.

ASSISE OF NOVEL DISSEISIN. [L. Lat. *assisa* (seu breve) *novæ disseisinæ*.] In old English practice. A writ or action which lay where a tenant in fee simple, fee tail, or for life, was disseised of his lands, tenements or hereditaments.* *F. N. B.* 177 A. *Roscoe's Real Act.* 63. *Bract.* lib. 4, tract. 1. *Fleta*, lib. 4, c. 5. It was so called, because the justices in eyre, before whom these assises were taken in their proper counties, rode their circuits from seven years to seven years, (i. e. every seven years,) and no disseisin before the eyre, if it were not complained of in the eyre, could be questioned after the eyre; and, therefore, a disseisin committed before

the last eyre, was called an *ancient disseisin*, and a disseisin after the last eyre was called a *new or novel disseisin*. *Co. Litt.* 153 b. It was much less formal and more summary in its proceedings than any similar remedy previously in use, and is called by *Bracton* *summarius cognitio, absque magnâ juris solemnitate*, and by the statute of Westminster the second, *festinum remedium*. *Bract.* fol. 164 b. *Fleta*, lib. 4, c. 1, § 16. It hence became one of the most frequent and important actions in the ancient law, but in modern times had long been superseded by the action of ejectment, before its express abolition by the statute 3 & 4 Will. IV. c. 27.

ASSISE OF MORT D'ANCESTOR.

[L. Lat. *assisa*, (seu breve) *mortis antecessoris*.] In old English practice. A possessory writ, founded upon the possession of the ancestor, which lay for the heir, where his father, mother, brother, sister, uncle, aunt, nephew or niece was seised in fee of any lands, tenements or rents; and died, being so seised on the day of his or her death, and a stranger, after such death, abated. *F. N. B.* 195, C. *Roscoe's Real Act.* 75. 3 *Bl. Com.* 185. *Bract.* lib. 4, tract. 3. *Fleta*, lib. 5, c. 1. Like the assise of novel disseisin, this writ had become obsolete long before its express abolition by the statute 3 & 4 Will. IV. c. 27.

ASSISE OF DARREIN PRESENTMENT. [L. Lat. *assisa*, (seu breve) *ultimæ præsentationis*.] In old English practice. An assise which lay for a tenant in fee or in tail, where he or his ancestors had presented (or had the last presentation, darrein presentment,) to a church, and the clerk had been instituted, and the plaintiff was afterwards hindered in presenting to the same church. It lay also for tenant for life or years, if he had himself presented. *Roscoe's Real Act.* 74. *F. N. B.* 31 F. 3 *Bl. Com.* 245. *Bract.* lib. 4, tract. 2. *Fleta*, lib. 5, c. 11. This action is now entirely disused, being superseded by the action of *quare impedit*, (q. v.)

ASSISE OF UTRUM. In old English practice. An assise (otherwise called a writ of *juris utrum*), which lay for a parson or prebendary at common law, and for a vicar, by statute 14 Edw. III. c. 17, to recover lands and tenements, belonging to the church, which were alienated by the predecessor; or of which he was disseised; or which were recovered against him by verdict, confession or default, without praying in

aid of the patron and ordinary; or on which any person had intruded since the predecessor's death. 3 *Bl. Com.* 253. *F. N. B.* 49. *Roscoe's Real Act.* 74. *Bract.* lib. 4, tract. 5. *Fleta*, lib. 5, c. 20. It derived its name from the emphatic word of the writ by which the jury were required to recognise *whether* (*utrum*) the tenements in question were frankalmoign belonging to the church of the demandant, or the lay fee of the tenant. *Bract.* fol. 286. *Reg. Orig.* 32 b. This writ has long been obsolete, principally by reason of the restraining statute of 13 Eliz. c. 10. 3 *Bl. Com.* 253.

ASSISE (or BILL) OF FRESH FORCE. [*L. Lat. assisa* (seu *billa*) *frisco fortie.*] In old English practice. A writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called *fresh force*, because it was to be sued within forty days after the party's title accrued to him. *F. N. B.* 7 C. 3 *Reeves' Hist. Eng. Law*, 28. *Plowd.* 89. *Fleta*, lib. 2, c. 55, §§ 6, 7. 3 *Leon.* 169. *Calthrop's R.* 149.

ASSISE OF NUISANCE. [*L. Lat. assisa de nocumento.*] In old English practice. An assise or writ which lay to remove a nuisance, and to recover damages. This writ, after stating the complaint of the injured party of some particular fact done to the nuisance of his freehold, (*ad nocumentum liberi tenementi sui*), commanded the sheriff to summon an *assise*, that is, a jury, and view the premises, and have them at the next commission of assises, that justice might be done therein. *F. N. B.* 183 I. 3 *Bl. Com.* 221. *Reg. Orig.* 197 b. It has long been superseded by the action on the case; and was expressly abolished in England with other real actions. 3 *Bl. Com.* 222. 3 *Steph. Com.* 503, note (g). See 17 *Serg. & Rawle's R.* 175. *Angell on Water-Courses*, § 394, and note.

ASSISES, (or ASSIZES), otherwise called **COURTS OF ASSISE (ASSIZE) AND NISI PRIUS.** In English practice. Sessions or courts held by two or more commissioners called judges of assise, (or of assise and *nisi prius*), who are twice in every year sent by the queen's special commission, on *circuits* all round the kingdom, to try by a jury of the respective counties the truth of such matters of fact as are then in dispute in Westminster Hall. 3 *Steph. Com.* 421, 422. These commissioners consist principally of the judges of

the superior courts of common law, and they usually make their circuits in the respective vacations after Hilary and Trinity terms. *Id.* 423. *Smith's Action at Law*, 129. They are so called from the commission of *assise* anciently issued to the judges, appointing or assigning them to *take assises* (*ad assisas capiendas*), that is, to take and receive the verdicts of jurors in certain actions then called assises. 3 *Bl. Com.* 57, 59, 352. See *Assise*. This commission of assise was actually issued down to a recent period, but the abolition of assises and other real actions has now thrown it out of force. 3 *Steph. Com.* 424, note (z).

ASSISES (or ASSIZES) DE JERUSALEM. A code of feudal jurisprudence, compiled A. D. 1099, after the conquest of Jerusalem, by an assembly of Latin barons or feudal lords, and of the clergy and laity under Godfrey of Bouillon, and intended for the kingdom of Jerusalem, then newly established. *Butler's Co. Litt.* note 77, lib. 3. 4 *Gibbon's Rom. Emp.* 139, (Am. ed.) 1 *Robertson's Charles V.* Appendix, note xxv. Dr. Robertson calls it "the earliest collection of those customs which served as the rules of decision in the courts of justice" of Europe. Mr. Stephen considers it "one of the most curious and important relics of the jurisprudence of the middle ages," and gives several extracts from it in illustration of the subject of pleading. *Steph. Plead.* Appendix, note (8). *Gibbon* (*ub. sup.*) has given a sketch of its history. And see *Butler's Hora Juridica*, 92, 93.

ASSISORES. *L. Lat.* [from *assidere*, to assess.] In old law. Persons who settled assises, or imposed taxes. *Spelman.* Hence probably the modern *assessors*.

ASSISORS, Assysers. In Scotch law. Jurors. *Skene de Verb. Signif.* voc. *Assisa.* *Spelman.* *Cowell.*

ASSISUS, Assisa. *L. Lat.* [from *assidere*, to fix or settle.] In old English law. Fixed or certain. *Assisus redditus*; a fixed, certain, set or standing rent. *Kennett's Par. Ant.* 314, 355. Called rent of assise. 2 *Bl. Com.* 42. *Terra assisa*; land let or farmed out for a certain assessed rent. *Cowell.*

Situated. *Villa de Jermuth assisa est super arenam maris*; the town of Yarmouth is situated on the sea-shore. *Vet. MS. apud Spelman*, voc. *Assisa*.

ASSITH. *Sc.* In old Scotch law. To indemnify. "Sovertie to *assith* the partie;"

(surety to indemnify the party.) *Skene de Verb. Sign. voc. Iter*, 14.

ASSIZE. See *Assise*.

ASSIZE. In Scotch law. A jury. 2 *Alison's Crim. Pract.* 376, 390. "The jury, or persons of assize." 3 *How. St. Trials*, 439.

To ASSIZE. [L. Lat. *assidere*.] In old English law. To fix; to regulate; to assess. "The assizing of men for arms." *Hale's Hist. Com. Law*, 126.

ASSOCIATION. [L. Lat. *associatio*.] In English practice. A patent sent by the king to the justices appointed to take the assizes, or of oyer and terminer, to have other persons associated to them to take the assize, upon which patent the king sends his writ to the justices, by it commanding them to admit them that are so sent. *Termes de la Ley. Reg. Orig.* 201, 203, 205 b, 206. According to Blackstone, writs of association are issued in pursuance of the statutes of 27 Edw. I. c. 4, and 12 Edw. II. c. 3; whereby certain persons (usually the clerk of assize and his subordinate officers,) are directed to associate themselves with the justices and serjeants; and they are required to admit the said persons into their society, in order to take the assizes. 3 *Bl. Com.* 59. 3 *Steph. Com.* 425. Writs of association, however, appear to have been in use before the reign of Edward I. See *Bract. fol.* 111.

ASSOCIATION. [from Lat. *associare*, from *ad*, to, and *socius*, a companion.] The union of a number of persons for the transaction of some business, or the attainment of some common object; a society or company. See *Company*, *Socius*.

A corporation. In New-York, associations under the general banking law of the state, are corporations. 7 *Hill's R.* 504, 518. They are "moneyed corporations," and "banking corporations," within the meaning of the statutes of this state. 3 *Comstock's R.* 479. 3 *Selden's R.* 328. See *Cleveland on the Banking System of New-York*, 96, 97, notes. *Id.* *Introduct.* lxi. lxii.

ASSOIGNE. L. Fr. Essoin; excuse. *Kelham*.

ASSOILE. *Assoyle*. L. Fr. and Eng. [from Lat. *absolvere*.] In old English law. To deliver or set free from excommunication. *Staundf. Pl. Cor.* 72. 12 *Mod.* 311.

To free or clear from guilt, or its consequences; to pardon, forgive or absolve.

Richardson's Dict. Stat. 1 Hen. IV. c. 10. Chart. 30 Edw. III. cited in Blount. See *Aboile*.

ASSOILZIE. In Scotch law. To acquit the defendant in an action; to find a criminal not guilty. *Bell's Dict. Tomlins*.

To declare the finding of not guilty; to declare or pronounce innocent. A pannel [prisoner] found not guilty is "*assoilzied simpliciter*, and dismissed from the bar." 1 *Brown's R.* 21. This term is also extensively used in civil cases.

ASSOINZIE. Sc. Excuse. 2 *Pitcairn's Crim. Trials*, 65.

ASSONEOR. L. Fr. An essoiner. *Fet Assaver*, § 16.

ASSONER. L. Fr. To essoin. *Assones*; essoined. *Fet Assaver*, § 16.

ASSOULDRE, *Assoudre*. L. Fr. To absolve, to acquit. *Kelham*.

ASSOUTH, *Assous*. L. Fr. Quit; free; discharged. *Litt. sect.* 338.

ASSOYL. L. Fr. To forgive; to pardon; to absolve. *Qe Dieu assoyl*; whom God assoil; on whom God have mercy. *Kelham*.

ASSULTUS. Lat. [from *assilire*, to assail.] An assault. *Spelman, voc. Assallire*.

ASSUME. To undertake. 1 *Ld. Raym.* 122. 4 *Co. 92*. See *Assumpsit*.

ASSUMPSIT. L. Lat. [from *assumere*, to undertake.] In practice and pleading. (He undertook.) The name of a civil action given by law to the party injured by the breach or non-performance of a *parol* contract (that is, a contract not under seal) legally entered into. It lies upon contracts either express, or implied by law, and gives the party damages in proportion to the loss he has sustained by the violation of the contract. 4 *Co. 92*. *Bac. Abr. Assumpsit*. 1 *Chitt. Pl.* 98, 99. 1 *Archb. N. Prius*, 1. *Brown on Actions*, 318—333. It is technically an action on the case, and derives its name from the emphatic word of the clause in the writ and declaration, (when in Latin,) expressive of the defendant's undertaking,—"super se assumpsit, et adtunc, et ibidem fideliter promisit,"—(undertook, and then and there faithfully promised). 1 *Chitt. Pl.* 111, 112. *Towns. Pl.* 410, 411. See *Indebitatus assumpsit*. This characteristic and once indispensable word is, however, now omitted in the English forms. *Reg. Gen. Trin. T. 1 Will. IV.* 1 *Chitt. Pl.* 98, note (y).

The undertaking or promise itself, upon which an action of assumpsit may be

brought. 2 *Mod.* 44. 3 *Bl. Com.* 157. *Termes de la Ley.* Cowell. See *Express assumpsit*, *Implied assumpsit*.

ASSURANCE. [L. Lat. *assurantia*.] In conveyancing. A deed or instrument of conveyance. The legal evidences of the transfer of property are in England called the *common assurances* of the kingdom, whereby every man's estate is *assured* to him, and all controversies, doubts and difficulties are either prevented, or removed. 2 *Bl. Com.* 294. See *Common assurance*. The word has now become obsolete, and occurs only in the formal parts of conveyances.

ASSURANCE. Eng. and Fr. [L. Lat. *asecuratio*.] In the law of contracts. A making sure or secure. A term formerly used in English maritime law, in the sense of the modern term *insurance*, and still retained in policies, but otherwise obsolete. *Molloy de Jur. Marit.* 287. Latterly, however, its use has been revived in its application to contracts of indemnity against life contingencies, which are now frequently termed *assurances upon lives*, by way of distinction from indemnity against losses by fire or at sea, &c., to which the term *insurance* is particularly appropriated. *P. Cyclopædia.* 3 *Ken's Com.* 365. The word *assured* has always been retained in its ancient sense. See *Assure*. *Assurance* is the term used in French law. *Ord. Mar.* liv. 3, tit. 6. *Emerig. Tr. des Ass.*

ASSURANTIA. L. Lat. In old pleading. An assurance. *Bridgm.* 16. *Towns. Pl.* 28, 54.

ASSURARE. L. Lat. In old pleading. To assure. *Towns. Pl.* 23, 54.

ASSURE. [Fr. *assurer*, L. Lat. *asecurare*, *assurare*.] To make sure, or secure; to confirm or establish; to insure. The party in whose favor a contract or policy of insurance has been executed, is still called the *assured*; the other party being termed the *insurer*. 2 *Steph. Com.* 172.

To convey. "If one be obliged to *assure* twenty acres of land," &c. *Cro. Eliz.* 665. See *Assurance*.

ASSURE. Fr. In insurance law. Assured; the assured or insured. *Emerig. Tr. des Assur.* c. 2, sect. 7, §§ 1, 2; c. 5, sect. 1.

"**ASSURED**," in a loose and improper sense, may import a contract to indemnify without regard to interest. 2 *East*, 385.

ASSYS. L. Fr. Assessed or affected. *Amerciements soient assys*; the americiaments shall be affected. *Britt.* c. 26.

ASSYTHMENT. In Scotch law. In-

demnification for killing, maiming or laming a person. 1 *Forbes' Inst.* part 2, b. 3, c. 1, tit. 10. *Ersk. Inst.* b. 4, tit. 4, § 105.—An indemnification due to the heirs of a person murdered, from the person guilty of the crime. *Bell's Dict.*

ASTATE. *Atat.* L. Fr. Estate. *Kelham.*
ASTITUTION. [Lat. *astitutio*, from *ad*, to, and *statuere*, to place; to place or set in order, one by another.] An arraignment was formerly sometimes so called. *Co. Litt.* 262 b. See *Arraignment*.

ASTONBZ. L. Fr. Tin. *Kelham.*

ASTRARIUS. L. Lat. [L. Fr. *astrer*, q. v.] In old English law. The occupant of a hearth or house; a person in actual possession. *Astrarius hæres*; an heir placed by the ancestor in the house (*astrum*) which he was to inherit. *Bract.* fol. 85. An heir in actual possession of the property, as occupying the house he was to inherit, (*eo quod reperitur in atrio sive in astro*.) *Id.* fol. 267 b. *Si ambo fuerint extra, et sic neuter astrarius*; if both were out [of possession], and so neither *astrarius*. *Id. ibid.* See *Id.* fol. 268. *Co. Litt.* 8 b.

A son who lived in his father's family. *Spelman.*

ASTRE. L. Fr. [L. Lat. *astrum*.] In old English law. A hearth or fireplace, (*caminus*;) a house. *Chescun home comuner que ad astre en mesme la ville*; every commoner who has a hearth in the same town or vill. *Britt.* c. 59. *Spelman.* *Yearb.* T. 5 Edw. III. 16.

ASTRER. L. Fr. [from *astre*, (q. v.); L. Lat. *astrarius*.] In old English law. A householder, or occupant of a house or hearth. *Chescun home astrer de mesme la ville*; every householder or resident of the same town or vill. *Britt.* c. 59.

Belonging to, or born in one's house. *Que il fuit son astrer, reseaut en son villeynage*; that he was his house slave, residing in his villeinage. *Id.* c. 98.

ASTRICT. [from Lat. *astrictus*, bound.] In Scotch law. To bind. Lands are said to be *astricted* to a mill, when the possessor is bound to carry the grain of the growth of the land to be ground at such mill. *Ersk. Inst.* b. 2, tit. 9, § 18. *Bell's Dict.* voc. *Multure*.

ASTRICTION. [from Lat. *astrictio*, a binding.] In Scotch law. A servitude by which the grain growing on certain lands is required to be carried to a certain mill to be ground. *Bell's Dict.* See *Astrict*.

ASTRIHLTHET. Sax. In Saxon law.

A kind of penalty or compensation imposed upon offenders having the king's peace. *LL. Edw. Conf. c. 30. Spelman.*

ASTRUM. L. Lat. [from Fr. *astre*, q. v.] A house, or place of habitation. *Bract. fol. 267 b. Fleta*, lib. 4, c. 2, § 8. *Cowell.*

ASTUTI. Lat. [plur. of *astutus*.] Astute; acute; of nice discrimination. It was said by Lord Hobart, that judges ought to be *astuti*, to find out reasonable distinctions to unreasonable rules. *Ambler*, 11. See 2 *Eden*, 258. On the other hand, it has been said that "*astutia* does not belong to a court of justice." Sir Wm. Scott, 2 *Rob. Adm. R.* 347.

AT, *Ad.* L. Fr. Hath. *Kelham.*

AT, *Et.* L. Fr. And. *Kelham.*

AT, *Atte*, *Ate*. A word used in the composition of early English surnames, usually distinctive of the place from which the name was taken. Thus Johan' *Atte* Graschirch, (*Yearb. M. 6 Edw. II.* 183;) Will' *Atte* More, (*Id. ib.*) Roger *Ate* Mulle, (*M. 7 Edw. II.* 215;) Martin *at* Wood, (*M. 2 Edw. III.* 2;) Brian *at* Yard. *P. 4 Edw. III.* 22. It gradually became changed into *a* or *of*, and finally disappeared. Thus, John *at* Stile, (*Perkins*, ch. 1, s. 52;) John *a* Style, (*Bacon's Arg. Case of Revoc. of Uses*;) John *a* Styles, (*11 Mod.* 90;) John *of* Styles. *Id.* 61.

"AT." As to the effect of inserting this word in a bill of exchange, see 4 *Campb.* 115, 117.

"AT AND FROM." Words frequently used in marine policies of insurance, the meaning of which depends upon the actual situation of the vessel at the time the insurance is effected. See 3 *Kent's Com.* 307, 308, and notes. *Story*, J. 1 *Mason's R.* 127, 140. 1 *Duer on Ins.* 167, § 14.

"AT ANY TIME." Ever; some time. *Freem.* 25. *Vaugh.* 34.

At all times. *Id. ibid.*

AT BAR. Before the court. "The case at bar." &c. *Dyer*, 31.

AT LARGE. [L. Fr. *a large*; L. Lat. *ad largum*.] In old practice. Not limited to any particular matter, point, or question. A special verdict was called a *verdict at large*, because it found the matter at large, [that is, it found all the facts proved without drawing any conclusions, instead of finding summarily for the one or the other party,] and left it to the judgment of the court. *Litt.* 366, 367. *Co. Litt.* 228 a. See *Dyer*, 41.

AT LARGE. Not under physical re-

straint. A ferocious animal is to be regarded as *at large* when he is so far free from restraint as to be liable to do mischief to man or beast. His being in the presence of his keeper affords no safe assurance that his known propensities will not prevail over the restraints of authority. *Redfield*, C. J. 26 *Vermont R.* 638, 641.

AT LAW. [L. Fr. *a ley*, *al ley*; L. Lat. *ad legem*.] According to law; by, for, or in law. This common expression has been applied from a very early period exclusively to the English common law, and seems peculiar to it. "At common law," (answering to the Fr. *al comen ley*, and Lat. *ad communem legem*;) is a phrase of constant occurrence in the books; *in* being the corresponding preposition applied to *equity*. "*At law and in equity*" is a phrase in daily use.

"*At law*" forms a part of the well-known professional titles, *serjeant at law*, and *bar-rister at law*, in England, and *attorney at law*, and *counsellor at law*, in the United States. These have not undergone any change, but the old and long obsolete English title, *apprentice at law*, had also the forms of "*apprentice in law*," and "*apprentice of law*." See *Apprenticius ad legem*. An *attorney at law* is still occasionally called an "*attorney in law*," by way of clearer distinction from *attorney in fact*. *Story on Agency*, § 24. The prepositions *at* and *in* both seem, in these connections, to have the sense of *for*.

AT SEA. Out of the limits of any port or harbor on the sea-coast. 1 *Story's R.* 251. See 3 *Hill's (N. Y.) R.* 118. 7 *Id.* 321.

"AT THAT TIME," in a will, construed. 12 *East*, 589.

ATAMITA. Lat. In the civil law. A great grandfather's grandfather's sister, (*atavi soror*.) *Hale's Com. Law*, c. xi. Called in *Fleta*, *atamita magna*. *Fleta*, lib. 6, c. 2, § 18.

ATAVIA. Lat. In the civil law. A great grandfather's grandmother. *Inst.* 3. 6. 3.

ATAVUNCULUS. Lat. A great grandfather's grandmother's brother; (*ata-via frater*); called by Bracton *atavunculus magnus*. *Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

ATAVUS. Lat. In the civil law. A great grandfather's grandfather. *Inst.* 3. 6. 3. *Bract.* fol. 67. *Fleta*, lib. 6, c. 2, § 1. *Plowd.* 449.

ATEGAR. Sax. [from *ateon*, to throw, and *gar*, a weapon.] A lance or javelin,

(*hasta missilis*;) a Saxon weapon. *Florent. Wigorn.* sub an. 1040. *Spelman.*

ATEIGNER. L. Fr. To come to or at; to attain; to amount to. *Kelham.*

ATHA, *Athe.* L. Lat. [from Sax. *ath*, an oath.] In Saxon law. An oath; the power or privilege of exacting and administering an oath. *Spelman.*

ATHARGRATI. [Germ. *ader*, a vein, and *grate*.] In old European law. A wound in a blood vessel, causing a flow of blood which could not be staunched without the cautery. *LL. Baiwar.* tit. 3, c. 1, § 4. *Spelman.*

ATHEIST. [from Gr. *a*, without, and *theos*, God.] One who does not believe in a God; one who denies the existence of God. An atheist is not a competent witness. 1 *Stark. Evid.* 81.

ATIA, *Atya*, *Acia*, *Acyra*, *Hatia*, *Hatya*. L. Lat. [from the English *hate*, according to *Spelman*.] In old English law. Malice, hate or hatred. *Reg. Orig.* 133 b. *Bract.* fol. 123. See *De odio et atia*.

ATILUM, *Attilium*. L. Lat. In old English law. Tackle; the rigging or tackle of a vessel. *Atilio decenti*; with suitable tackle. *Mem. in Scacc.* T. 24 Edw. I. *Atilia*, (pl.) the tackle or harness of a horse, cart or plough. *Cowell*, voc. *Attile*.

ATMATERTERA. Lat. In the civil law. A great grandfather's grandmother's sister, (*atavia soror*); called by Bracton *atmatertera magna*. *Bract.* fol. 68 b.

ATNEPOS. See *Adnepos*.

ATNEPTIS. See *Adneptis*.

ATPATRUUS. Lat. A great grandfather's grandfather's brother, (*atavi frater*); called by Bracton *atpatruus magnus*. *Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

ATRAMENTUM. Lat. [from *ater*, black.] In old English law. Black fluid used in writing; ink. *Fleta*, lib. 4, c. 10, § 4.

ATRENCHÉ, *Attrenche*. See *Tout atrenche*.

ATRET. L. Fr. Drawn aside. *Kelham.*

ATREYS. L. Fr. Other. *Kelham.*

ATRIAMENTUM. L. Lat. [from *atrium*, a court.] In old European law. A court-yard. *Formul. Vett. Rom.* num. 43. *Spelman.*

ATTACH. [L. Lat. *attachiare*; from Fr. *attacher*, to tie or bind to.] In practice. To take or apprehend by commandment of a writ or precept, commonly called an attachment. *Cowell. Termes de la Ley. Spelman.* Applied both to persons and property. See *Attachment*.

Various distinctions are made in the old books, between the significations of the words *attach* and *arrest*, which have ceased, however, to be of any practical value. *Arrest* (q. v.) is now entirely confined to the taking of the person.

ATTACHE. Fr. Attached to; connected with. A person attached to a foreign legation. 1 *Baldwin's R.* 234, 240. *Bouvier.*

ATTACHIAMENTUM. L. Lat. In old English law. An attachment. *Bract.* fol. 469 b, 440. *Reg. Orig.* 18, et *passim. Spelman.* In old Scotch law, *attachiament*. *Skene de Verb. Sign. Solennitas attachiamentorum*, (q. v.); the formality of attachments; the old practice of issuing one attachment after another, in a regular order or series. *Bract.* fol. 437. 1 *Reeves' Hist. Eng. Law*, 480—487.

ATTACHIARE. L. Lat. In old English law. To attach; to attach a person. *Præcipimus tibi quod attachies, &c.*; we command you that you attach, &c. *Reg. Orig.* 64 b. *Tunc attachiari facias*; then you cause to be attached. *Bract.* fol. 149. *Attachiabitur*; he shall be attached. *Glanv.* lib. 3, c. 6.

To attach; to attach property; to seize. *Mag. Cart. Johan.* c. 26. *Id.* 9 Hen. III. cc. 18, 30.

ATTACHMENT. [L. Lat. *attachiamentum*.] In practice. A taking or seizure of a person or property, by virtue of a legal process. See *infra*.

A writ or process for the taking or seizure of persons or property. See *Attach*.

An attachment against the person is a writ or process in the nature of a criminal proceeding, issuing out of a court of record, against a person who has committed some contempt of court, either by openly insulting the court itself, or by insulting, resisting, disregarding or abusing its process, or by doing or omitting to do any thing which shows his disregard of the authority of the court. Attachments of this kind may be issued against attorneys, solicitors, sheriffs, gaolers and other officers of court, parties to suits, jurors, witnesses, inferior judges and officers, for misconduct or neglect of duty; and against all persons who may be guilty of a contempt of court, either direct or consequential. 4 *Bl. Com.* 283, 284. 4 *Steph. Com.* 348. 1 *Tidd's Pr.* 479, 480. See *Contempt*. The object and effect of the attachment, in these cases, is to bring the party personally into court, where, unless

he clears himself of the contempt, he is punished by fine or imprisonment, or both, at the discretion of the court. 4 *Bl. Com.* 287. See *U. S. Digest*, Attachment, V.

An *attachment against property* is of several kinds, as

1. The old process of *attachment* in English practice, by which a defendant's goods were seized as a distress or means of compelling his appearance in an action. 3 *Bl. Com.* 280. *Roscoe's Real Act.* 151.

2. An ancient mode of procedure under the custom of London, by which a debt due a debtor by a third person, (termed a *garnishee*,) might be seized and appropriated to the payment of a creditor's demand. See *Drake on Attachment*, chap. 1, § 1, *et seq.*

3. A species of *mesne process* peculiar to the practice of some of the Eastern States, by which the goods and chattels, or lands of a defendant are seized at the commencement of a suit, and held as security to satisfy such judgment as the plaintiff may recover. *Rev. Stat. Mass.* 1836, part iii. tit. 2, c. 90, §§ 23, 24. *Story on Bailm.* § 124. *Story, J. 2 Story's R.* 131, 141. This was originally the same with the English process, (*supra.*) *Parsons, C. J. 7 Mass. R.* 123, 128. See *U. S. Digest*, Attachment, I. *Minot's Digest*, Attachment.

4. A process against the property of absent, absconding, concealed and non-resident debtors, otherwise called *foreign attachment*, and in some cases, *domestic attachment*. A species of this process is termed *garnishment*, and in some states, *trustee process* and *factorizing process*. See *Foreign attachment*, *Domestic attachment*, *Garnishment*, *Trustee process*, *Factorizing*. This is a proceeding unknown to the common law, and the provisions authorizing it are strictly construed by the courts, and required to be closely pursued by those who resort to it. See 14 *Georgia R.* 232. *Drake on Attachments*, § 4.

ATTACHMENT OF PRIVILEGE. In English practice. An attachment founded upon, or having reference to privilege. Attorneys and other officers of court were formerly *privileged* to sue in the courts to which they belonged, and the process by which actions in these cases were commenced was termed an *attachment of privilege*. 1 *Tidd's Pr.* 37, 38. *Steph. Pl.* 58, (Am. ed. 1824.)

An attachment of privilege was also anciently so called, when it issued to appre-

hend a person in a *place privileged*. *Termes de la Ley*.

ATTACHMENTS, Court of. In forest law. The lowest of the forest courts, held before the verderors of the forest once in every forty days, to receive from the foresters or keepers their attachments or presentments against vert and venison, and to enrol or certify them to the court of *justice-seat* or *sweyn mote*. *Cart. de Forest.* c. 8. 3 *Bl. Com.* 71, 72. *Termes de la Ley*. 3 *Steph. Com.* 439. Like the forest courts generally, it is now disused. *Id. ibid.*

ATTAINDER. [L. Lat. *attinctura*; from Fr. *atteindre*, to reach to, or overtake, or *teindre*, to taint, or stain.] In English criminal law. That extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony, receives sentence of death for his crime. 1 *Steph. Com.* 408. The person so sentenced is called *attaint*, or *attainted*, (*attinctus*, stained or blackened.) He is no longer of any credit or reputation; he cannot be a witness in any court, neither is he capable of performing the functions of a man, for, by an anticipation of his punishment, he is already dead in law. 4 *Bl. Com.* 380. 4 *Steph. Com.* 446. The consequences of attainder are forfeiture and corruption of blood. 4 *Bl. Com.* 381. 3 *Id.* 251. See *Forfeiture*, *Corruption of blood*.

Acts of attainder were passed by several of the United States during and shortly after the revolution, but the doctrine of attainder is now scarcely known in American law, and the passage of bills of attainder by the states is expressly prohibited by the constitution of the United States. *Const. U. S. Art. I. Sect. XI. Story on the Const.* §§ 1343, 1344. *Id.* (Abr.) §§ 677, 678. *U. S. Digest*, Attainder.

ATTAINT. [L. Fr. *atteynto*; L. Lat. *attincta*.] In old English practice. A writ which lay to inquire whether a jury of twelve men had given a false verdict, in order that the judgment might be reversed. 3 *Bl. Com.* 402. *Bract.* fol. 288 b,—292. *Britt.* c. 98. *Reg. Orig.* 203 b,—205, *et passim*. *F. N. B.* 105 G. This inquiry was made by a grand assise or jury of twenty-four persons, and if they found the verdict a false one, the judgment was that the jurors should become infamous, should forfeit their goods and the profits of their lands, should themselves be imprisoned, and their wives and children thrust out of doors, should have their houses razed, their trees extir-

pated, and their meadows ploughed up, and that the plaintiff should be restored to all that he lost by reason of the unjust verdict. 3 *Bl. Com.* 404. *Co. Litt.* 294 b. *Bract.* fol. 292 b. See *Keilw.* 83. This punishment was afterwards modified by statute, but the writ of attain remained in force, (though quite fallen out of use,) till abolished by the statute 6 Geo. IV. c. 50, s. 60. 3 *Steph. Com.* 627, note (s).

ATTAINT, *Atteint*, *Attaynt*, *Taynt*. L. Fr. [*L. Lat. attinctus, attainatus.*] In old English law. Attainted; convicted or found guilty of some offence. *Attaint de disseisin*; convicted of disseisin. *Stat. Westm.* 1, c. 24. *Spelman*, voc. *Attainatus*.

Defeated in an action. *Estre attain et vaincu en aucun cas*; to be attain and overcome, or cast in any case. *Cowell. Blount. Spelman*, ubi sup. *Attaintes pur serfs*; found by verdict to be villeins. *Kelham*. A distinction, however, was generally made by the old writers between *attainder* and *conviction*. See *Cowell. Blount.* 4 *Bl. Com.* 380.

ATTEIGNALMENT, *Ateisament*, *Atteynement*, *Atteynaument*. L. Fr. Effectually; strenuously; remain for ever. *Kelham*.

ATTEINDRE. L. Fr. To attain, to convict; attainder, conviction. *Kelham. Atteint, atteynt*; convicted, found guilty; proved; adjudged. *Id.*

To attain, to obtain; to meet; to abide by. *Kelham*.

ATTEMPT. In criminal law. An endeavor to commit an offence, carried beyond mere preparation, but falling short of actual commission. *Burrill on Circ. Evid.* 365. An attempt to commit a felony is in many cases a misdemeanor; and an attempt to commit even a misdemeanor has been decided in many cases to be itself a misdemeanor. 1 *Russell on Crimes*, 46.

ATTENDANT. [*L. Lat. attendens.*] In old English law. Owing a duty or service to another; waiting or depending upon another. Where a widow was in certain cases endowed by a guardian, she was said to be *attendant* to the guardian, and to the heir at his full age. *Termes de la Ley. Cowell*.

ATTENDANT TERMS. In English law. Terms, (usually mortgages,) for a long period of years, as one thousand or two thousand years, which are created or kept outstanding for the purpose of *attending*, or waiting upon and protecting

the inheritance.* 1 *Steph. Com.* 351.—Thus, where land held in fee is mortgaged for a long term of years, (as a thousand years,) and upon the estate being sold, the mortgage is paid off out of the purchase money, it is usual for the purchaser, (instead of taking a surrender of the term to himself, and so merging it in the inheritance,) to keep it on foot, and have it assigned to a trustee of his own nomination, in trust for himself, (the purchaser,) “and to attend and protect the inheritance.” The reason of this practice is, that the beneficial or equitable interest in a term assigned upon such a trust, follows (though a mere chattel,) all the limitations of the inheritance,—belongs to the heir or devisee of the new owner, and not to his executor or administrator, and is subject to the other incidents of a fee simple; so that, for all purposes of convenience, the case is the same as if it had merged into the inheritance; while, on the other hand, it affords him a security which he could not have had if a merger had actually taken place. For if it should afterwards turn out that prior to the purchase, but posterior to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favor of another person, to which the then trustee of the outstanding term had been no party, and of which the subsequent purchaser had had no notice when he took his conveyance, and paid his purchase money, he will be protected against it through the medium of the *term*, which being the elder title, will also take the priority in point of legal effect. 1 *Steph. Com.* 351, 352. Terms may also become attendant by the mere construction of a court of equity. *Id.* 352. See 2 *Crabb's Real Prop.* 529, § 1738, et seq. *Burton's Real Prop.* 276, pl. 860. *Id.* 439, pl. 1428. 4 *Kent's Com.* 86—93.

In the United States, the doctrine of *attendant terms* is of little practical value, terms for years being treated altogether as personal estate; which go in a course of administration, as chattel interests, without any suggestion of their being of the character of attendant terms. 4 *Kent's Com.* 93, 94. See 1 *Hilliard's Real Prop.* 345. And in England these terms have been, in a great degree, abolished by the statute 8 & 9 Vict. c. 112.

ATTENTARE, *Attemptare*. L. Lat. In old English law. To attempt. *Vobis prohibemus ne quicquam in premissis attentare*

presumatis; we prohibit you that you do not presume to attempt any thing in the premises. *Reg. Orig.* 36 b. *Nec quicquam in hac parte attentetis, seu attentari faciat.* *Id.* 37. *Attemptant*; should attempt. *Mem. in Scacc.* M. 22 Edw. I.

ATTENTAT. Lat. [from *attentare*, q. v.] He attempts. In the civil and canon law. Any thing wrongfully innovated or attempted in a suit by an inferior judge, (or judge à quo,) pending an appeal. 1 *Adams' R.* 22, note. *Ayliffe, Parerg.* 100. *Shelford, Marr. & Div.* 562.

ATTERMINARE. L. Lat. [from *ad*, to, and *terminus*, a term.] In old English practice. To adjourn; to put off to another term, (*ad terminum ponere*.) See *infra*. *Coram justitiariis nostris apud Westmonasterium* atterminatas; adjourned before our justices at Westminster. *Bract.* fol. 110. *Atterminata*,—*posita ad talem terminum*; adjourned,—put to such a term. *Id.* fol. 426. *Atterminent querentes*; the plaintiffs may adjourn. *Stat. Westm.* 2, c. 24.

To determine. *Stat. Westm.* 2, c. 30. See *Atterminatio*. But this was not the proper sense of the word. See *Bract.* fol. 355 b.

ATTERMINATIO. L. Lat. In old English law. Determination. *Reg. Orig.* 30.

ATTERMINEMENT. L. Fr. Respite; adjournment; attermination. *Kelham.*

ATTERMINER. L. Fr. To put off, or adjourn; to respite; to delay. *Kelham.* To grant further time for the payment of a debt.

ATTERMINEZ. L. Fr. Determinable; respited. *Kelham.* *Dettez atterminez*; debts for the payment of which certain times were assigned. *Kelham.*

ATTERMINING. In old English law. A putting off; the granting of a time or term, as for the payment of a debt. *Cowell.*

ATTEST. [Lat. *attestari*, from *ad*, to, and *testari*, to witness.] In practice and conveyancing. To witness or testify. To bear witness to; to witness by observation and signature. To witness the execution of an instrument, and to subscribe the name in testimony of such fact.* See 4 *Taunt.* 213. Where it is provided that an instrument shall be *attested*, the term *attest* implies that a witness shall be present to testify that the party who is to execute the deed has done the act required. 9 *M. & W.* 404.

To witness the execution of an instrument on the request of the parties executing it.* 3 *Campb.* 232.

ATTESTATION. [from Lat. *attestari*, to witness.] The act of witnessing the signature or execution of a deed or other instrument, and subscribing the name of the witness in testimony of such fact. Blackstone considers it the same as "execution in the presence of witnesses." 2 *Bl. Com.* 307. But *execution* and *attestation* are clearly distinct formalities; the former being the act of the party, the latter of the witnesses only.

ATTESTATION CLAUSE. In conveyancing. The memorandum or form of words, at the end of an instrument, immediately preceding and over the names of the attesting witnesses; importing that they have attested its execution in due form. It usually consists of the words "Sealed and delivered in the presence of," but in wills is of greater length and expressed in more specific terms. It is not conclusive as to the ceremony of execution, but may be explained by the testimony of the witnesses themselves, or by reference to the *testimonium* clause of the instrument. 6 *Man. & Gr.* 386. 8 *Howard's R.* 33.

ATTESTOR OF A CAUTIONER. In Scotch practice. A person who attests the sufficiency of a cautioner, and agrees to become *subsidiarie* liable for the debt. *Bell's Dict.*

ATTEYNTE. L. Fr. Attaint; an attain. *Britt.* c. 98.

ATTILAMENTUM. L. Lat. In old English law. Tackling or tackle; rigging; furniture, equipment. *Batellus cum onere et omni attilamento*; a boat with her lading and all her tackle. *Fleta*, lib. 1, c. 25, § 9. *Phalera*, *attilamenta et harnesia minuta carectis appendentia*; tackle, equipments and small harness belonging to carts. *Id.* lib. 2, c. 85.

ATTILATUS. L. Lat. In old English law. Harnessed; tackled. *Attilatus equus*; a horse with his gears or harness on, for the work of the cart or plough. *Cowell.*

ATTILE. L. Lat. In old English law. Rigging; tackle. *Cowell.*

ATTILES. L. Fr. Stores. *Kelham.*
ATTILIUM, (pl. *ATTILIA*, *Atilia*.) L. Lat. In old English law. The rigging or tackle of a ship. *Navem cum attilio decenti*; a ship with proper rigging. *Mem. in Scacc.* T. 24 Edw. I. *Naves et attilia.* *Id.* M. 4 Edw. I. See *Atilium*, *Atilia*.

ATTILMENT. L. Fr. Equipment; fitting out. *Kelham.*

ATTINCTA. L. Lat. [from *attingere*,

to touch or reach, or from *tingere*, to stain.] In old English law. An attain. *Reg. Orig.* 121 b, 122, 203 b, 204. *Spelman.*

ATTING'. A contraction of *Attingunt*. See *Attingere*.

ATTINGERE. Lat. [from *ad*, to, and *tangere*, to touch.] In the civil law. To touch; to reach to; to be allied to; to be united or connected with. *Cognations affinitate attinget*; shall be connected by relationship or affinity. *Dig.* 47. 10. 5. pr. *Qui aliqua affinitate non attingunt*; who are not related by any affinity. *Bract.* fol. 72, 150. The simple *attingit*, from *tangere*, is used in *Inst.* 3. 1. 8.

In old practice. To touch or reach to; to amount to. *Quæ summam quadraginta solidorum attingunt, vel eam excedunt*; which amount to, or exceed the sum of forty shillings. *Reg. Orig.* 145. *Attingunt se*; they amount to. *Yelv.* 80. *Quæ in toto se attingunt*; which in the whole amount to. See *In toto se attingunt*. *Attingentia*; amounting to. *Hob.* 133.

ATTITLES. L. Fr. Assigned. *Kelham.*

ATTORN, *Attorn*. [L. Lat. *attornare*, *attornare*; from Fr. *attorner*, to turn over, or transfer; or *tourner*, to turn or exchange, to give one thing in place of another.] In feudal law. To transfer or turn over to another. Where a lord aliened his seignior, he might, with the consent of the tenant, and in some cases without, (*velit nolit*) *attorn* or transfer the homage and service of the latter to the alienor or new lord. *Bract.* fol. 81 b, 82. In such case, he was sometimes said to *attorn* or transfer the tenant himself, (*attornare tenentem*), and the tenant was said to be *attorned*, (*attornari, attornabitur.*) *Id. ibid.* *Id.* fol. 169.

To consent to a transfer; to transfer one's self, or one's services.—Where a tenant consented to the grant or transfer of the seignior, he was said to *attorn* (properly, to *attorn himself*) to the grantee; that is, to transfer his services to him, and agree to become his tenant. 2 *Bl. Com.* 288. "Sir, I *attorn* to you by force of the said grant," was the form of words by which this consent was usually expressed. *Litt.* sect. 551, 553, 554. This is the origin of the modern practice of *attornment*, (q. v.) See *infra*.

In modern law. To consent to the transfer of a rent or reversion. A tenant is said to *attorn*, when he agrees to become the tenant of the person to whom the reversion has been granted. See *Attornment*.

In old practice. To put in one's place;

to substitute; to appoint an attorney. See *Attornare*.

ATTORN'. An abbreviation of *Attornatus*. 1 *Instr. Cler.* 9.

ATTORNAMENTUM, *Attornamentum*. L. Lat. [from *attornare*, q. v.] In old English law. Attornment. *Co. Litt.* 309 a. See *Attornment*.

ATTORNARE, *Attornare*. L. Lat. [L. Fr. *attorner*; according to *Spelman*, from *tourner*, to turn, to exchange; to give one thing in place of another.] In feudal law. To *attorn*; to transfer or turn over. *Attornare servitium tenentis*; to attorn the service of a tenant. *Bract.* fol. 81 b, 82. *Et attornat servitium firmarii*; and attorns the service of the fermor or lessee. *Id.* fol. 178. *Possum attornare tenentem meum*; I may attorn my tenant. *Id.* fol. 169. *Cum ipse, de voluntate sua, se attornaverit ei, et ei fecerit servitium*; where he, of his own will, attorned himself to him, and did service to him. *Id.* fol. 41. *In quibus casibus attornabitur, velit nolit*; in which cases he shall be attorned, whether he will or not. *Id.* fol. 82. *Homagium contra voluntatem hominis attornari non poterit*; homage cannot be attorned against the will of the vassal. *Fleta*, lib. 3, c. 16, § 36. *Attornare rem*; to attorn or turn over a thing, as money and goods; i. e. to assign or appropriate them to some particular use and service. *Kenn. Par. Ant.* 283. *Cowell.*

In old practice. To attorn; to put in one's place; to appoint a substitute or attorney. *Pateat universis per presentes, quod ego, A. de B., attornavi, et in loco meo constitui C. de D.*; Know all men by these presents, that I, A. of B., have attorned, and put in my place C. of D. *Reg. Orig.* 172. *Vobis precipimus quod attornatum quem W. per literas suas patentes loco suo attornare voluerit—recipiatis*; we command you that you receive the attorney whom W. by his letters patent may choose to attorn in his place. *Id.* 172 b. The words *attornare, attornavi, attornavi, attornaverat*, &c., are of constant occurrence in the forms of letters of attorney, and writs *de attornato recipiendo*, in the Register. *Reg. Orig.* 26—29.

ATTORNATIO. L. Lat. In old English law. An attornment. *Bract.* fol. 79 b.

ATTORNATUS, *Attornatus*. L. Lat. [from *attornare*, q. v.] In old English law. One who is attorned, (L. Fr. *attourné*), or put in the place of another, (*ad turnum alterius*); a substitute, (*vicarius*); an attor-

ney. *Spelman*. *Attornatus vel procurator*; an attorney or procurator, (proctor.) *Reg. Orig.* 25 b, 281. These were nearly or quite synonymous terms. *Provisum est quod quilibet liber homo—libere possit facere attornatum suum*, &c.; it is provided that every freeman—may freely make his attorney, &c. *Stat. Merton*, (20 Hen. III.) c. 10. *Fleta*, lib. 2, c. 66, § 12. *Reg. Orig.* 26 b. *Attornati et apprenticii*; attorneys and apprentices. *Fleta*, lib. 2, c. 37. Called, in old Scotch law, *actornatus*, (q. v.) See *Attorney*, *Attorney at law*, *Attornatus*.

ATTORNE. L. Fr. In old English law. An attorney. *Britt.* c. 126.

ATTORNER. L. Fr. In old English law. To attorn or transfer. *Que le seigneur puisse attorner le homage et le service son tenaunt*: that the lord may attorn the homage and service of his tenant. *Britt.* c. 68. *Si aucun tenaunt de son gree ne se voille attorner a tener de autre seigneur*; if any tenant of his own will, will not attorn himself to hold of another lord. *Id. ibid.* See *Attorn*.

ATTORNEY, *Attorney*, *Attourney*. [L. Lat. *attornatus*, *attornatus*; L. Fr. *attorné*, *attourné*; from *tourner*, or *attourner*, to turn, put in the place of, substitute; or *tourner*, a turn or change.] One who is substituted for another, (*vicarius*), or put in his place or turn, (*ad turnum*, i. e. *ad vicem*), to act for him, or manage his concerns.* One who manages the affairs of another by the direction or appointment of his principal, (*ad mandatum domini*.) *Spelman*. One who is appointed by another to do something in his place or stead. *Termes de la Ley. Com. Dig.* Attorney, A. One who is employed by another to do any act for his benefit, or on his account.* *Story on Agency*, § 3. Called in old Scotch law, *actornay*. *Skene de Verb. Sign. voc. Actornatus*. The Spanish law uses the very expressive term *personero*, (q. v.) Cowell writes the word *attorney*, after the *attornatus* of *Spelman*.

Attorneys are either public or private; or, as they are more commonly distinguished, *attorneys at law*, and *attorneys in fact*. See *infra*.

ATTORNEY AT LAW. [L. Lat. *attornatus* or *attornatus*, *procurator*, *responsalis*, qq. v.] In practice. One who is put in the place, stead, or turn of another, to manage his matters of law. 3 *Bl. Com.* 25. A public attorney, (answering to the *proc-*

tor of the ecclesiastical and admiralty courts, the *solicitor* of courts of equity, and, in many respects, to the *procurator ad litem* of the civil law), whose office is to appear for the parties to actions and other judicial proceedings, and to prosecute and defend them in their behalf, and whose authority is derived either from a formal warrant of attorney, or, which is the usual practice, a mere oral retainer. Attorneys are regarded as *officers* of the respective courts in which they are admitted to practice, and their business, as distinguished from that of *counsellors*, is to carry on the practical and more mechanical parts of suits, or such proceedings as do not require to be conducted in open court. See *Counsellor*. This distinction has been adopted from the English practice, and where it is observed, *attorney* is regarded as a name or title of *degree* as well as of office, to which persons are usually admitted before taking that of counsellor. In many of the United States, however, no such distinction is observed, although both titles are retained in common use. 1 *Tidd's Pr.* 60—90. *U. S. Digest*, Attorney and counsel.

Attorneys, on being admitted, take an oath of office in open court. Hence it has been said, "an attorney means a sworn attorney." Pratt, C. J. 11 *Mod.* 383.

* * * The term *attorney* (*attornatus*) does not appear in English law until the time of Bracton, although it occurs in the *Constamier* of Normandy, (c. 65), a compilation of earlier date; whence Cowell reasonably infers it to be of Norman origin. Glanville uses in its place sometimes the word *nuntius*, sometimes *procurator*, but most commonly *responsalis*, (one who answers for another.) *Glanv.* lib. 11. See *Responsalis*. Mr. Stephen supposes the office of a *responsalis* to have been in substance the same with that of an attorney. *Steph. Pl. Appendix*, note (5). Bracton, however, (whom *Fleta* copies,) expressly says that there was a great difference between them, (*est differentia magna inter responsalem et attornatum*), and enumerates various acts which an attorney could do, and which a *responsalis* could not. *Bract.* fol. 212 b. And see *Id.* fol. 349 b. *Fleta*, lib. 4, c. 6, § 7. *Id.* lib. 6, c. 11, § 6. In the *Regiam Majestatem*, the word is written *actornatus*. Lib. 4, c. si quis defendens, 46.

The person by whom an attorney was appointed, and for whom he acted, was called his *master* or lord, (Lat. *dominus*,

Fr. seignieur.) *Perkins*, ch. 3, s. 188, 189. *Attornatus fere in omnibus personam domini representat*; an attorney represents the person of his master in almost all respects. *Bract* fol. 342. *General attorne puit tant que son seignieur puit*; a general attorney may do as much as his lord may. *Britt.* c. 46. *Un attorney dit que son master avoit recover*; an attorney said that his master had recovered. *Yearb.* T. 1 Edw. III. 10. H. 3 Edw. III. 9. *Le defendant fuit attorney de son master per son commandement.* *Keilw.* 50 b. See *Dominus, Apprenticius ad legem.*

ATTORNEY AT LARGE. In old practice. An attorney who practiced in all the courts.* *Cowell.*

ATTORNEY IN FACT. [L. Lat. *procurator, vicarius.*] A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, (*in factum*), or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a *letter of attorney*, or more commonly a *power of attorney*, (qq. v.) *Bac. Abr.* Attorney. *Story on Agency*, § 25. The word, in its most general sense, includes all agents employed in any business, or to do any act or acts in *pais* for another. *Id. ibid.*

ATTORNEY GENERAL. A law officer of state in England and the United States; the attorney of the King or Queen, (*attornatus regis, or reginæ*;) the attorney of the government or state.

In England, the attorney general is appointed by letters patent, and selected from the queen's counsel. He is the only legal representative of the crown in the courts, and his duties are to exhibit informations, to prosecute for the crown in criminal matters, to conduct proceedings in the exchequer in revenue causes, and generally to appear and act in all legal proceedings, and in all courts where the interests of the crown are in question. *Wharton's Lex. P. Cyclopædia.* 3 *Bl. Com.* 27. 4 *Burr.* 2570. *Tomlinson.* The title of attorney general is first mentioned in England in the eleventh year of Edward IV. 4 *Reeves' Hist. Eng. Law*, 122.

The Attorney General of the United States is appointed by the President, and his office is, (besides special and incidental duties,) to prosecute and conduct all suits in the Supreme Court in which the United States are concerned, and to give his advice

and opinion upon questions of law, when required by the President, or the heads of the departments. *Act of Congress*, September 24, 1789, § 35. 1 *Kent's Com.* 308. Each of the states has also its attorney general, whose duties are defined by its own laws. See *U. S. Digest*, Attorney and Counsel.

ATTORNEY GENERAL. [L. Fr. *attorne general*; L. Lat. *attornatus generalis.*] In old practice. A general attorney; one who was authorized to appear in all suits and causes, and in all courts; or in all suits at a particular circuit, or for a specified period of time.* *Reg. Orig.* 20—22. These were made either by the king's letters patent, or by appointment of the people, (*par constitutions de gens*) before the justices in eyre. *Britt.* c. 126. See *Id.* c. 46. An *attorney special*, on the other hand, was one who was employed in one or more causes particularly specified, or one who belonged to a particular court. *Cowell.*

ATTORNMENT. [L. Lat. *attornamentum, attornatio*; L. Fr. *attournance.*] In feudal and old English law. A turning over, or transfer by a lord, of the services of his tenant to the grantee of his seignior. A transfer by the tenant, of his services to the grantee, or new lord; a tenant's consent to a transfer of lands by his lord; or his acknowledgment or acceptance of the grantee as his lord, in place of the former lord.* See *Attorn, Attornare.*

In English law. An agreement of a tenant to the grant of a seignior, [i. e. to become tenant to a new lord of the seignior,] or of a rent; or the agreement of a donee in tail, or tenant for life, or years, to a grant of a reversion or of a remainder, made to another, [i. e. to become connected with him in the relation of landlord and tenant of the tenement.] *Shep. Touch.* (by Preston), 253. *Co. Litt.* 309. Attornment might be by words alone, as by saying to the grantee, "I agree to the grant made to you," or "I am well content with the grant made to you;" but the most common attornment was to say, "Sir, I attorn to you by force of the said grant," or, "I become your tenant;" or it might be in writing to the same effect; or it might be by delivering to the grantee a penny, or a half penny, or a farthing, by way of attornment. *Litt.* sects. 551, 553, 554. *Co. Litt.* 309 b. Attornment continued to be a necessary ceremony in the transfer of estates, until dispensed with by the statutes of 4 and 5

Anne, c. 16, and 11 Geo. II. c. 19. 2 *Bl. Com.* 290. 1 *Steph. Com.* 434—436, 475.

In the United States, attornment may be considered as abolished. 4 *Kent's Com.* 490, 491. The term, however, continues to be applied to the acts of tenants, in somewhat of its ancient signification. See *Attorn.*

ATTOURNANCE. L. Fr. Attornment. *Kelham.*

ATTRAIRE, *Attrer.* L. Fr. To draw to. *Kelham.*

ATTURNATUS. L. Lat. In old English law. An attorney. One who manages the affairs of another, by the direction of his principal. One who, being put in the place of another, conducts his master's causes in court, and answers in his name. Otherwise called *procurator, responsalis, nuntius, missus.* Properly, a substitute, (*vicarius*), from Fr. *tourner*, to turn, to exchange, to give one thing in place of another. *Spelman.* See *Attornatus.*

ATTURNATUS GENERALIS. L. Lat. Attorney general. *Vaugh.* 53.

ATTURNE. L. Fr. An attorney. *Britt.* c. 126. See *Attorne.*

ATTURNER. L. Fr. To attorn. *Litt.* sects. 553, 554.

ATTURNEY. An old form of attorney, (q. v.) used by Cowell.

ATYA. L. Lat. In old English law. Hatred. *Bract.* fol. 123. See *Atia.*

AU. L. Fr. At. *Au plus*; at most. *L. Fr. Dict.* *Au temps*; at the time. *Id.* To. *Au quel*; to whom, or which. *Id.* For. *Au aumone*; for alms. *Id.*

Until. *Au ceo temps*; until this time. *Id.*

AUBAINE, *Aubaigne.* Fr. See *Droit d'aubaine.*

AU BESOIN. Fr. [In case of need; "au besoin, chez Messrs.—à—;" "in case of need, apply to Messrs.—at—."] In French law. Words used in the direction of bills of exchange, pointing out certain persons who, in case of a refusal or failure of the drawee, are to be applied to, that they may honor and pay the bill, in the nature of an acceptance *supra protest.* *Story on Bills,* § 65. The same words are also used in endorsements. *Id.* § 216.

AUCEPS SYLLABARUM. Lat. A catcher of syllables. One who takes (or offers to take) advantage of trifling verbal inaccuracies, watching or lying at catch for the mistakes of others, like a fowler or bird-catcher, (*auceps*); a catching, captious,

tricky pleader, or practitioner. *Cic. de Orat.* i. 55.

AUCTIO. Lat. [from *augere*, to increase.] In the civil law. An auction; a public sale. *Dig.* 41. 4. 2. 8, 9. *Brissonius.*

AUCTION. [from Lat. *auctio*, from *augere*, to increase.] A public sale, where the parties desiring to purchase bid upon each other, that is, successively offer an increasing price; the sale being to the highest bidder.* From the circumstance of the bids being repeated aloud by the salesman or auctioneer, it has been sometimes termed a sale "by outcry." *Babington on Auctions,* 3. Both the term *auction*, and the mode of sale itself, are of Roman origin. *Id.* 1—3. See *Auctio, Subhastatio.*

AUCTIONARIUS, *Auxionarius.* L. Lat. In old English law. A seller, regrater or retailer. *Auctionarii et auxionatrices panis, cervisie, et aliarum rerum*; retailers (male and female) of bread, ale and other things. *Cowell. Placit. Parl.* 18 *Edw. I.* cited *ibid.*

A broker; one who bought as well as sold. *Spelman, voc. Auctionarii.* *Auctionarius qui emit*; an auctioneer who buys. *Gloss. Isodori,* cited *ibid.*

A broker, or person who loaned money. *Gregor. Mag. Registr.* lib. 1, epist. 42, cited *ibid.*

An auctioneer, in the modern sense. *Spelman, ubi sup.* See *Auctioneer.*

AUCTIONEER. [from L. Lat. *auctionarius*, (q. v.); Lat. *propola.*] One who conducts an auction or public sale.* *Spelman, voc. Auctionarii.* A person who is authorized to sell goods or merchandise at public auction or sale, for a recompense, or (as it is commonly called,) a commission. *Story on Agency,* § 27. An auctioneer differs from a broker in being authorized only to sell, and that at public auction. *Id. ibid.* 2 *H. Bl.* 555. Formerly, however, auctioneers had power to buy as well as sell, and were indeed called brokers. *Auctionarii, quos Angli brokers dicimus*; auctioneers, whom we English call brokers. *Spelman, voc. Auctionarii.* 2 *H. Bl. ub. sup.* See *Auctionarius.*

AUCTOR, *Actour.* L. Fr. [from Lat. *actor*, q. v.] A plaintiff. *Kelham.*

AUCTOR. Lat. In the civil law. One from whom some right passes to another; an author or source of right or title; as a vendor, grantor, assignor, &c.* *Brissonius.*

One by whose authority any thing is done; a principal. *Id.*

AUCTORITAS. Lat. [from *auctor*, q. v.] In the civil law. Authority. See *Brissonius*.

In old European law. A diploma, or royal charter. A word frequently used by Gregory of Tours and later writers. *Spelman*.

AUCTORIZARE. L. Lat. In old English law. To authorize. *Auctorizati*; authorized. *Fleta*, lib. 6, c. 10, § 29.

AUCUN, Aucon, Augune, Acone, Akune. L. Fr. Some; some one. L. Fr. Dict. *Kelham*. *Aucune foits*; sometimes. L. Fr. Dict. *Aucunement*; somewhat. *Id.*

AUCUPIUM. Lat. [from *auceps*, a fowler.] In old English law. A catching at; the taking advantage of, or laying stress upon trivial mistakes, or oversights. *Aucupia verborum sunt iudice indigna*. Catchings at words are unworthy of a judge. *Hob.* 343. See *Auceps syllabarum*. *Aucupatio* is used in the civil law. *Cod.* 2. 58. 1.

AUDIENCE COURT. [L. Lat. *curia audientie Cantuariensis*.] In English ecclesiastical law. A court belonging to the Archbishop of Canterbury, of equal authority with the Arches court, though inferior both in dignity and antiquity. *Termes de la Ley*. *Wharton's Lex*.

AUDITA QUERELA. L. Lat. (Having heard the complaint.) In practice. A writ which lies for a defendant against whom judgment is recovered, and who is therefore in danger of execution, or perhaps in execution, whereby he may be relieved, upon showing good matter of discharge, which has happened since the judgment; as if the plaintiff has given him a general release, or if the defendant has paid the debt to the plaintiff, without procuring satisfaction to be entered on the record. In these and the like cases, an *audita querela* lies in the nature of a bill in equity. It is a writ, directed to the court in which the judgment is recovered, stating that the complaint of the defendant has been heard, (*audita querela defendantis*), and after setting out the matter of the complaint, it enjoins the court to call the parties before them, and having heard their allegations and proofs, to cause justice to be done between them. 3 *Bl. Com.* 405. *Reg. Orig.* 114, 149. *Reg. Jud.* Appendix, 14, 15. *F. N. B.* 102, H. *Bac. Abr.* *Audita querela*. *Com. Dig.* h. t. *U. S. Digest*, h. t.

This writ is now rarely used, the object of it being, in most cases, attainable by *motion* to the court, founded on affidavit of

the facts. 3 *Bl. Com.* 406. 3 *Steph. Com.* 641, note (m). *Eyre*, C. J. 1 *Bos. & Pul.* 428.

AUDITOR. Lat. and Eng. [from *audire*, to hear.] An officer, or person whose business is to examine and verify the accounts of persons entrusted with money. A person appointed to examine a particular account, and state or certify the result; in doing which, he is said to *audit* the account. Literally, a *hearer*, (from Lat. *audire*, to hear);* so called, probably, from the ancient practice of delivering accounts *viva voce*. *Brande*.

In English law. An officer or agent of the crown, or of a private individual, or corporation, who examines periodically the accounts of under officers, tenants, stewards or bailiffs, and reports the state of their accounts to his principal. *P. Cyclopædia*. The auditors of the exchequer were officers appointed to take the accounts of receivers of the public revenues. Their duties are now performed by a board of commissioners. *Brande*.

In American law. An officer of the treasury of the United States, whose duty is to examine the accounts of officers who have received and disbursed public moneys by lawful authority. *Acts of Congress*, March 3, 1817, sess. 2, c. 45; February 24, 1819, sess. 2, c. 43.

In practice. A person (usually several persons) appointed by the court in actions of account, to take the accounts of the parties. 3 *Bl. Com.* 163. 1 *Story's Eq. Jur.* §§ 447, 448. See *Account*.

AUDITORES COMPOTI. L. Lat. In old English law. Auditors of account. *Stat. Westm.* 2, c. 11. *Fleta*, lib. 2, c. 70, § 13. *Auditores compotorum*. *Id.* lib. 2, c. 88.

AUDITUS. L. Lat. [from *audire*, to hear.] In old pleading and practice. Hearing. *In auditu quamplurimorum*; in the hearing of very many. *T. Raym.* 196.

Oyer, (which was anciently an actual hearing.) *Et petunt auditum scripti prædicti, et eis legitur in hæc verba*; and they pray oyer of the said writing, and it is read to them in these words. *Hob.* 19 a. 2 *Ld. Raym.* 1540. *Si querens petat auditum*; if the plaintiff pray oyer. *Stat. Westm.* 2, c. 39. See *Oyer*.

AUGMENTATION. In old English law. The name of a court erected in the twenty-seventh year of King Henry VIII. for the purpose of protecting the king's interests, in relation to the profits of sup-

pressed religious houses and their lands, given him by act of parliament of the same year. So called from the *augmentation* of the revenues of the crown, derived from the suppression of such houses.* *Termes de la Ley*. The court was dissolved in the reign of Queen Mary, but the office of augmentation remained long after. *Id. Cowell*.

AUGUSTA. Lat. In the Roman law. The title of the wife of the emperor, (*Augustus*;) corresponding with queen consort in English law. 1 *Bl. Com.* 218. *Dig.* 1. 3. 31. *Id.* 31. 57. *Id.* 49. 14. 6. 1. *Cod.* 6. 22. 7. It was first given to Livia, the wife of Augustus, but finally became a common title of the mother, wife, sister or daughter of an emperor. *Tacit. Annal.* i. 8. *P. Cyclopædia.* *Augusta legibus soluta non est*; the empress or queen is not privileged or exempted from subjection to the laws. 1 *Bl. Com.* 219. *Dig.* 1. 3. 31.

AULA, Haula, Halla. L. Lat. In old English law. A hall, or court; the court of a baron, or manor; a court baron. *Spelman*.

A hall, or chief mansion house; the usual appendage of a manor. *Domesday. Whishaw*.

The hall of a house, in the modern sense. *Reg. Jud.* 13 b. *Facio tibi aulam, ut tu facias mihi cameram*; I make you a hall, in consideration of your making me a chamber. *Bract.* fol. 19. *Dividitur aula à camera.* *Fleta*, lib. 5, c. 9, § 18.

AULA REGIS, or REGIA. Lat. The king's hall, or palace; sometimes called *curia regis*, the king's court. A court established by William the Conqueror in his own hall or palace. It was the supreme court of the kingdom, and was composed of the king's great officers of state, resident in his palace, and usually attendant on his person; such as the lord high constable, and lord mareschal, the lord high steward, and lord great chamberlain, the steward of the household, the lord chancellor, and the lord high treasurer. These high officers were assisted by certain persons learned in the laws, who were called the king's *justiciars*, or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of court of appeal, or rather of advice in matters of great moment and difficulty. The presiding officer of this court was called the *chief justiciar* or justiciary of all England, (*capitalis or summus justitarius totius Angliæ*.) *Bract.* lib. 3, tract. 1, c. 7, ¶ 2, fol. 105 b. *Fleta*, lib. 2, cc. 2, 3. *Gillb. Hist. C. Pleas*, Introd. 18. 3 *Bl. Com.*

37, 38. 1 *Reeves' Hist. Eng. Law*, 48. The *Aula Regis* was afterwards broken up into several courts, as the King's Bench, the Common Bench, Chancery, and Exchequer, (qq. v.) 3 *Bl. Com.* 39.

AULM, Aume. L. Fr. Soul. *Kelham*. See *Alm*.

AULNAGE. See *Alnage*.

AULNAGER. See *Alnager*.

AUMONE. L. Fr. Alms; another form of *almoyn* or *almoign*. *Tener* [*tenur*] *en aumone*; tenure in alms. *Britt.* c. 66. *Fraunche aumone*; frank *almoyn*; free alms. *Id. ibid.*

AUNCEL WEIGHT. [*quasi* hand-sale weight.] In English law. An ancient mode of weighing, described by Cowell as "a kind of weight, with scales hanging, or hooks fastened to each end of a staff, which a man, lifting up upon his forefinger or hand, discerneth the quality or difference between the weight and the thing weighed." Being liable to great deceit, it was prohibited by several statutes, and the even balance commanded. *Stat.* 25 *Edw.* III. st. 5, c. 9. *Stat.* 34 *Edw.* III. c. 5. *Stat.* 8 *Hen.* VI. c. 4. It continued in use, however, in various parts of England, until finally abolished by statute 22 *Car.* II. c. ult. *Cowell*. It has been thought to have resembled the modern *stilliards*. *Wharton's Lex.*

AUNCESTRE. L. Fr. Ancestor; an ancestor. *Britt.* c. 70.

AUNCIEEN, Aunciennes. L. Fr. Ancient. *Aunciennes demeynes*; ancient demesnes. *Britt.* c. 66.

AUNCIATUS. L. Lat. Ancient. *Charta aunciata, et libertas anterior*; an ancient charter, and privilege of older date. *Bract.* fol. 57 b.

AUNZ, Auntz. L. Fr. Years. *Kelham*.

AUREL, Auril, Avril, Aurilleux. L. Fr. April. *Kelham*.

AURICULARUM SCISSIO. L. Lat. In old English law. Cutting or cropping of the ears. *Fleta*, lib. 1, c. 38, § 10.

AURIFODINA. Lat. In civil and old English law. A gold mine. *Dig.* 3. 4. 1. pr. *Bract.* fol. 222 b.

AURUM. Lat. In the civil law. Gold. *Dig.* 34. 2. *Id.* 34. 2. 19, 27, 32.

AURUM REGINÆ. Lat. In old English law. Queen's gold. *Mem. in Scacc.* M. 5 *Edw.* I. *Id.* 6 *Edw.* I. 1 *Bl. Com.* 219, 220. See *Queen-gold*.

AUSINT, Ausinc, Ausin, Ausoys, Ausieu. L. Fr. Also; in this manner. *Kelham*.

AUSSI, *Auzi, Avissi*. L. Fr. Also. L. Fr. *Dict. Litt.* sect. 95.

AUSTREGÆ. L. Lat. In old German law. Arbiters appointed to determine controversies, for the purpose of restraining the practice of private war so prevalent during the middle ages. 1 *Rob. Charles V.* Appendix, note xlii.

AUSTURCUS. L. Lat. In old English law. A gos-hawk. *Cowell. Aeria austurcorum*; eeries of gos-hawks. *Fleta*, lib. 2, c. 41, § 7.

AUT. Lat. In the civil law. Or. Held, in certain cases, to have the sense of *et*, (and.) *Quum dicimus quod dedi aut donavi, utraque continemus*; when we say "*quod dedi aut donavi*," we include both. *Dig.* 50. 16. 53. This was under the rule *disjuncta pro conjunctis accipiantur*. *Id. ibid.* By the Code, the word *aut*, in wills, was expressly required to be construed *et*, in the cases mentioned. *Cod.* 6. 38. 4.

In old pleading. Or. *Aut eo circiter*; or thereabouts. *Towns. Pl.* 18. For the use of *aut* in connection with *vel*, *seu* and *sive*, see *Id.* 25.

AUTANT. L. Fr. As much; so much; like *as*. L. Fr. *Dict.*

AUTER, *Autre*. L. Fr. Another; other. *Litt.* sect. 39. *Auters*; others. *Id.* sect. 38. See *infra*.

AUTER ACTION PENDANT. L. Fr. In pleading. Another action pending. A species of plea in abatement. 1 *Chitt. Pl.* 454. See *Fleta*, lib. 2, c. 61, § 12.

AUTER DROIT. L. Fr. Another right; another's right. See *En autre droit*.

AUTERMEN. L. Fr. Otherwise.

ΑΥΤΕΘΥΣΙΟΝ, Αὐτεθυσίος. Gr. [from *αὐτός*, himself, and *θυσία*, power.] In the civil law. One who has the control of his own actions, (Lat. *sui juris, suæ potestatis*;) independent; not under the power of another. *Nov.* 118, c. 1. See *Sui juris*.

AUTHENTIC. Genuine; of authority; emanating from the proper source; vested with all due formalities, and legally attested; entitled to faith or credit; that may be received and relied on as evidence. See *Authenticum*.

AUTHENTIC ACT. In the civil law. An act received by a public officer, with the requisite solemnities. *Poth. Obl.* part 4, ch. 1, sect. 1, § 1. An act (or deed) executed before a public notary or other authorized officer; or which is attested by a public seal; or certified as being a copy of a public register. *Cod.* 4. 21. 17. *Nov.*

73, c. 2. *Civ. Code of Louisiana*, art. 2231.

AUTHENTICATE. In the law of evidence. To give legal authority to an act, record, or other written instrument, so as to render it admissible in evidence, by certain prescribed formalities of attestation and certification, usually under seal. The acts of the legislatures of the several states of the Union are *authenticated* by having the seals of their respective states affixed thereto. *Act of Congress*, May 26, 1790, sess. 2, ch. 11. See *Act of March* 27, 1804, sess. 1, ch. 26.

AUTHENTICATION. In the law of evidence. The act or mode of giving legal authority to a statute, record, or other written instrument, or a certified copy thereof, so as to render it legally admissible in evidence. See *Authenticate*.

AUTHENTICS. [Lat. *Authentica*.] In the civil law. A Latin translation of the novels of Justinian by an anonymous author; so called because the Novels were translated *entire*, in order to distinguish it from the epitome made by Julian; (*Epitome Novellarum, or Juliani*.) 1 *Mackeld. Civil Law* 60, § 72, note (c). It is now termed the *versio vulgata* (common version), and was called by the glossators, *Corpus authenticum*. *Id. ibid.* note (b).

Extracts from the Novels, inserted by the glossators in the Code and Institutes. *Id.* 67, § 81.

AUTHENTICUM. Lat. In the civil law. An original instrument or writing; the original of a will or other instrument, as distinguished from a copy. *Dig.* 22. 4. 2. *Id.* 29. 3. 12.

AUTHENTICUS. Lat. In the civil law. Original. *Dig.* 10. 2. 4. 3.

AUTHORITIES. In practice. Citations of, or references to statutes, adjudged cases, and the opinions of text-writers, made on the argument of causes or questions before a court, as grounds of the points or propositions contended for.

AUTHORITY. [Lat. *auctoritas*.] Delegated power, as that of an agent or attorney.* Power delegated by a principal to his agent or attorney. *Story on Agency*, § 3.

AUTO ACORDADO. Span. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign. *Schmidl's Civ. Law*, 93.

ΑΥΤΟΚΡΑΤΩΡ, Αυτοκράτωρ. Gr. In the civil law. Emperor. A title given to Justinian

in several of his Novels; as the first, fifth, seventh, tenth, twelfth, thirteenth, fourteenth, and others.

AUTRE, *Autry, Autri, Altre, Auter*. L. Fr. Other; another. *Britt. c. 54. Kelham*. See *Auter*.

AUTREFOIS, *Autrefois, Auterfois, Autrevez*. L. Fr. At another time; formerly; before; heretofore. See *infra*.

AUTREFOIS ACQUIT. L. Fr. (Formerly acquitted.) In criminal law. A plea by a criminal to an indictment, that he has been *formerly acquitted* on an indictment for the same offence. It being a maxim of the common law, that no man is to be brought into jeopardy more than once for the same offence, it is allowed as a consequence, that when a man is once fairly found not guilty upon any indictment or other prosecution, before any court having competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime. 4 *Chitt. Bl. Com.* 335, and notes. 4 *Steph. Com.* 404, and note (r). 1 *Chitt. Crim. Law*, 452—460. 1 *Russell on Crimes*, 831. *Wharton's Am. Crim. Law*, 136—146. *U. S. Digest*, Autrefois acquit, and Autrefois convict.

AUTREFOIS CONVICT. L. Fr. (Formerly convicted.) In criminal law. A plea by a criminal in bar to an indictment, that he has been formerly convicted of the same identical crime. 4 *Chitt. Bl. Com.* 336. 4 *Steph. Com.* 404. 1 *Chitt. Crim. Law*, 462. See *Autrefois acquit*.

AUTREFOIS ATTAINT. L. Fr. (Formerly attainted.) In English criminal law. A plea of former attainder, in bar to an indictment. 4 *Bl. Com.* 336. 4 *Steph. Com.* 405, 6.

AUTRE, or AUTER VIE. L. Fr. Another's life. A person holding an estate for or during the life of another is called a tenant *pur autre vie*, or *pur terme d'auter vie*. *Litt. sect. 56*. 2 *Bl. Com.* 120.

AUTRESI BIEN. L. Fr. As well as; likewise. *Kelham*.

AUTRESI COME. L. Fr. As if. *Kelham*.

AUTRESINT. L. Fr. Likewise. *Kelham*.

AUVER, *Auvere*. L. Fr. To have. *Kelham*.

AUXI, *Auzy, Aussi, Avissi*. L. Fr. Also; so. *Litt. sects. 5, 95. Kelham*. See *Auzy, Aussi*.

AUXIBIEN, *Auzybien*. L. Fr. As well. *Litt. sect. 200*.

AUXILIUM. Lat. In feudal and old English law. Aid; a kind of tribute paid by the vassal to his lord, being one of the incidents of the tenure by knight's service. *Spelman*. See *Aid. Auxilia ad filium primogenitum militem faciendum, vel ad filiam primogenitam maritandam*; aids to make the eldest son a knight, or to marry the eldest daughter. *Bract. fol. 36 b*.

A subsidy or tallage paid to the king. *Spelman. Cowell*.

In old practice. Aid or help to defend a suit. *Auxilium petere*; to pray aid. *Cowell*. See *Aid*.

Aid or help to commit a crime. *Fleta*, lib. 1, c. 31, § 8. See *Aid*.

AUXIONARIUS. See *Auctionarius*.

AUXY. L. Fr. As; so. *Auzy pleinment*; as fully. *Artic. sup. Chart. c. 1. Auzy sovent que*; as often as. *Litt. sect. 430. Auzy icy*; so here. *Yearb. P. 7 Hen. VI. 22*.

AVAIL, *Aval*. L. Fr. Downwards; down; below. The opposite of *amount*, (q. v.) See *Avaler*.

AVAIL OF MARRIAGE. In Scotch law. Value of marriage. *Bell's Dict. Skene de Verb. Sign. voc. Maritagium hæredis*. See *Valor maritagii*.

AVAILE. L. Fr. Advantage; benefit or profit. *Kelham*.

AVAILS. Profits; proceeds; the proceeds of property sold.* Cash or securities, the representative of money. *Gardiner, J. 3 Comstock's R. 278*. Sometimes applied to a residue of property not already disposed of. *Pratt, J. Id. 282*.

AVAL. L. Fr. Down; below; at the bottom. *Va aval la rue*; goes down the street. *Kelham*.

AVAL. Fr. [L. Lat. *avallum*.] In French law. The guaranty of a bill of exchange; so called because usually placed at the foot or bottom (*a val*) of the bill. *Story on Bills*, §§ 454, 394.

AVALER, *Avaller*. L. Fr. To descend or go down. *Avalaunt*; descending. *Kelham. Amountaunt et nient avalaunt*; ascending and not descending. *Britt. c. 70*.

To lower, or bring down. *Avale*; lowered. *Id. c. 63*.

AVANT, *Avaunt*. L. Fr. Before. *Avant ces heures*; heretofore. *Artic. sup. Chart. pr. De cy en avant*; from now henceforth. *Id. c. 1. De avant*; before. *En avant*; henceforward. *Issint avant*; so on. *L. Fr. Dict. Kelham. Avant dit, avaunt dit, avantdit, avandit, avandits*; before said,

aforesaid. *Litt. secta. 19, 21, et passim. Avaunt dites. Conf. Chartist. 25 Edw. I.*

AVANTAGIUM. L. Lat. In old records. Advantage; profit. *Cum omnibus suis utilitatibus ac avantagiis inde provenientibus*; with all its profits and advantages thereof issuing. *Regist. Eccl. Christi. Cantuar. cited in Cowell.*

AVANTURE. L. Fr. Chance; hazard; mischance. *D'aventure*; perchance; perhaps. *Kelham. En avanture*; for fear; lest there should be occasion for. *Id.* See *Aventure, Grosse aventure.*

AVARIA. L. Lat. In maritime law. Average, or contribution. *Loccen. de Jur. Mar. lib. 2, c. 8.*

AVARIE. Fr. In maritime law. Average. *Ord. Mar. liv. 3, tit. 7.*

AVAUNT. L. Fr. Before; forthcoming. *Kelham. Avaunt meyn*; beforehand. *Id. Plus avaunt*; more fully. *Id. Quil soint avaunt*; that they are proceeding on the business. *Id.* See *Avant.*

AVEER. L. Fr. To avow; to acknowledge. *Kelham.*

AVEIGNER, Avenir. L. Fr. To come, or become; to happen. *Si cas aveigne*; if the case happen. *Britt. c. 75. Ou l'aventure serra avenue*; where the accident shall have happened. *Id. c. 1.*

AVEIR. L. Fr. [L. Lat. *averium*, q. v.] A beast; cattle. *LL. Gul. Cong. 8, 29. Goods. Id. 31.*

AVENA. Lat. Oats. *Fleta, lib. 2, c. 20.*

AVENAGE. [L. Lat. *avenagium*; from Lat. *avena*, oats.] In old English law. A certain quantity of oats paid to a landlord in lieu of some other duties; or as a rent from the tenant. *Cowell. A rent paid in oats.*

AVENAGIUM. L. Lat. A tribute of oats paid by tenants to their lords in certain parts of France. *Spelman.*

AVENANT, Aveignaut. L. Fr. [from *avener*, q. v.] Value; price. *Kelham. That which a thing comes to.*

Material. Id.

AVENANEMENT, Avenaument. L. Fr. Answerably; properly. *Kelham.*

AVENER. L. Fr. To come, or become; to happen. *L. Fr. Dict. Kelham. To come to; to amount to. Id.*

To come at; to get possession of. Id.

AVENTURE, Aventura. L. Fr. [from *avener*, to happen.] A mischance or accident by which the death of a man is occasioned without felony; as by some sudden illness, by falling into the water, or into the

fire. *Britt. c. 7.* Britton makes a distinction between *aventure* and *mesaventure*, (q. v.)

AVENTUROUS. L. Fr. Casual; contingent. *Kelham.*

AVER. [L. Fr. *averrer*; L. Lat. *verificare*.] In pleading. To make a positive statement of fact, in opposition to argument or inference. See *Averment.*

In old pleading. To avouch or verify. *Litt. sect. 691. Co. Litt. 362 b.* To make or prove true; to make good or justify a plea. See *Averer, Verify.*

To offer to verify, or make good. Cowell.

AVER, Avere, Averde, Aveir, Avoer, Auver, Auvere. L. Fr. To have. *Kelham. Avomus*; we have. *Dyer, 11 b. Avomps. Kelham. Avums. Conf. Chart. 25 Edw. I. Avium*; we had. *Avietz*; you have. *Avans*; having. *Kelham. L. Fr. Dict. Averioms*; shall have. *Kelham. Averroit*; would have. *Id.*

AVER. O. Eng. and Fr. [L. Fr. *aveir, avor*; L. Lat. *averium, averum*.] A working beast; a horse or bullock. *Cowell, voc. Averia. Spelman voc. Avera. LL. Gul. Cong. l. 7.* See *Avers.*

AVER ET TENER. L. Fr. In old conveyancing. To have and to hold. Formal words, corresponding with the L. Lat. *habendum et tenendum*, (q. v.) The clause containing these words was called "the *aver et tener*," sometimes, "le *avir et tenir*." *Yearb. M. 8 Edw. III. 16, arg.*

AVERA. L. Lat. [from Fr. *ouvre, ouvrage*, labor, work.] In old English law. A day's work of a ploughman; a kind of customary service rendered by the king's tenants within the demesne lands of the crown. *Domesday. Spelman. Cowell.*

AVERAGE. [L. Lat. *averagium*; Fr. *avarie*; Germ. *habrie*; Dutch, *aberie*; Lat. *contributio*.] In maritime law. Loss or damage accidentally happening to merchandise on board a vessel, or to the vessel itself, (*dommage fortuit qui arrive a la marchandise ou au navire.*) *Casaregis, disc. 45, n. 15. Scacca de Commercio, § 2, gl. 5, n. 58, p. 340. Emerig. Tr. des Ass. ch. 12, sect. 39. Ord. Mar. liv. 3, tit. 7, art. 1.—Damage happening to merchandise in the course of transportation; (detrimētum quod vehendis mercibus accidit.) Spelman, voc. Averagium. This is an ancient sense of the term.*

Contribution made by all the parties concerned in a sea-adventure, to make good a specific loss or expense voluntarily sustained or incurred by some or one of

them, for the benefit of all. *Abbott on Ship.* 473. *Stevens on Av.* 58. *Loccenius de Jur. Mar.* lib. 2, c. 8. 1 *Story's Eq. Jur.* § 490. *Story on Bailm.* § 583. Sometimes called *general average*, to distinguish it from special or *particular average*, and sometimes by the name of *gross average*, to distinguish it from customary average mentioned in bills of lading, which last species is sometimes called also *petty average*. *Abbott on Ship.* 473, 474. Sir William Scott, (The Copenhagen,) 1 *Rob. Adm. R.* 293. Lord Mansfield, C. J. 3 *Burr.* 1555. See *General average*, *Particular average*, *Gross average*.

Contribution seems to be the prevailing modern sense of this word. In a late Pennsylvania case, however, (Nimick v. Holmes, 25 *Penn. St. R.* 366, 371,) Lowrie, J. reverted to the more ancient signification, and defined average to mean "*ship-damage*, and not contribution, as is plain when we speak of particular average." But the term *particular average* has been condemned by Lord Tenterden, as "a very incorrect expression." *Abbott on Ship.* 473. In the French Ordonnance of the Marine, the subject of average is separated from that of jettison and contribution. See *supra*. Emerigon mentions three senses in which the word was used; damage sustained, (*le dommage souffert*;) the payment of a right, tax or duty, (*le paiement d'un droit*;) and contribution to a common loss, (*la contribution d'une dépense commune*.) *Tr. des Ass.* ch. 12, sect. 39, § 4.

* * Of the origin of this word, little seems to be known with certainty. Spelman thinks it to be from the Fr. *avaris*, (forte *a-varach*.) Loccenius, following Boxhorn, derives the word either from the Fr. *havre*, or Teut. *hafen*, a harbor. *De Jur. Mar.* lib. 2, c. 8, sect. 1. Other writers, as Weitsius, derive it from the Gr. *βapis*, a ship. *Id. ibid.* Cowell inclines to derive it from the same root with the word *average* in old English law, which signified a service of carriage, or a service performed by carrying with horses or carts, (or *cum averiis*.) "This contribution seemeth to be so called," he observes, "because it is proportioned after the rate of every man's *average*, or goods carried." But the idea of carriage, though an important one, is quite subordinate to that of *proportion*, which is the principal idea involved in the meaning of average in its modern sense. It is said, however, that average has not the sense of

a medium or mean proportion in any European language except the English. *Stevens on Av.* 96, note (1). Webster considers this sense as derived from the practice of maritime contribution. Emerigon thinks that the true etymology has not yet been discovered, and probably never will be. *Tr. des Assurances*, ch. 12, sect. 39, § 4; quoting *Marquardus*, lib. 3, c. 4, n. 4.

AVERAGE LOSS. In maritime law. A partial loss of goods or vessels insured, for which the insurers are bound to compensate the insured in the proportion which the loss bears to the whole insurance. 3 *Steph. Com.* 178.

AVERAGE, PETTY. See *Petty Average*.

AVERAGE. [L. Lat. *averagium*, from *avera*, or *averia*, qq. v. O. Sc. *arage*.] In old English law. A service by horse or carriage, anciently due by a tenant to his lord. *Cowell*. A labor or service performed for the king or lord, with working cattle, (*opus quod averiis perficitur*), horses or oxen, or with wagons and carriages. *Spelman*, voc. *Avera*.

AVERARE, Averrare. L. Lat. [from Lat. *operare*, to labor, according to Spelman.] In old English law. To carry goods upon loaded horses, or other beasts, or in a wagon, (*cum averiis vel curru res where*); a duty formerly required of some customary tenants. *Spelman*.

To drive cattle (*averia*) to some fair or market. *Cowell*.

AVERCORN. [from Fr. *ouvre*, or *ouvrage*, work, according to Somner; or from *avoir*, to have or receive, according to Cowell.] In old English law. A reserved rent in corn, [grain,] paid to religious houses by their farmers or tenants. *Cowell*.

Corn drawn to the lord's granary by the working cattle (*averiis*) of the tenant. *Somner's Lex.* cited *ibid*.

AVERER. L. Fr. [from Lat. *verus*, true.] To aver, to prove, to make out to be true. *Si Jon pousse averer que Peres, &c.*; if John can prove that Peter, &c. *Britt. c.* 75. *Si ceo soit avere, si cheyt lacion*; if this be proved, the action abates. *Id. c.* 85. This appears to have been a term peculiar to civil pleading and practice. *Id. c.* 22.

AVERIA. L. Lat. [L. Fr. *avera*, from *ouvre*, or *ouvrage*, work, labor.] In old English law. Working cattle (*operaria animalia*), as horses, oxen, mules. *Spelman*.

Reg. Orig. 81 b—83. *Fleta*, lib. 2, cc. 44, 48.

Cattels (*catalla*) might sometimes be demanded under the name of *averia*. *Bract.* fol. 159 b. *Fleta*, lib. 2, c. 48, § 3. The singular of this word (*averium*), is used by Bracton and *Fleta*, but rarely by other writers. See *Averium*. Skene quotes the *Regiam Majestatem* as using *averia* in the singular.

AVERIA CARUCÆ. L. Lat. [L. Fr. *bestes des charues*.] In old English law. Beasts of the plough; which, at common law, were privileged over other cattle. *Fleta*, lib. 2, c. 48. *Co. Litt.* 85 b. 3 *Bl. Com.* 9. *Reg. Orig.* 97 b. Called by *Fleta*, *bestia caruca*, as distinguished from *averia otiosa*, (idle beasts.) *Fleta*, lib. 4, c. 17, § 15.

AVERILL. L. Fr. April. *Kelham*.

AVERIUM. L. Lat. [from Fr. *ouvre*, work, or *aver*, to have.] In old English law. A live beast; a work-beast, or working animal. *Melius averium*; the best beast. *Bract.* fol. 60. *De meliori averio suo, vel de secundo meliori*; of his best beast, or second best. *Id.* fol. 86. 2 *Bl. Com.* 424. See *Heriot*. *Per unicum averium vel per duo*; by one beast or by two. *Bract.* fol. 223. *Fleta*, lib. 2, c. 49, § 4. *Id.* lib. 4, c. 20, § 7. See *Averia*.

AVERIUM PONDERIS. L. Lat. In old English law. Full weight, or *aver de pois*. *De qualibet libra de averio ponderis, tres denarios*; of every pound of avoirdupois, three pence. *Cart.* 3 *Edu.* II. cited in *Cowell*.

AVERLAND. In old English law. Land ploughed and manured by tenants with their cattle (*cum averiis suis*), for the proper use of a monastery, or the lord of the soil. *Blount*.

AVERMENT. In pleading. A positive statement of facts, in opposition to argument or inference. 1 *Chitt. Pl.* 320. Usually expressed or introduced by the words,—"And the said — *avers*, and in fact says." See *Id.* 324.

AVERMENT. [L. Lat. *verificatio*.] In old pleading. An offer to prove a plea, or pleading. The concluding part of a plea, replication, or other pleading, containing new affirmative matter, by which the party offers or declares himself "ready to verify," that is, to prove it to be true. *Termes de la Ley*. *Co. Litt.* 462 b. 3 *Bl. Com.* 313. *Finch, Law*, 359. In modern pleading, it is termed a *verification*, (q. v.)

The act of justifying or proving a plea, as well as the offer to do so. *Cowell*. *Blount*.

Proof, in general. A latent ambiguity of words is supplied or helped by *averment*. *Bacon's Max.* 90, *regula* 23.

AVERPENNY, *Averpeny*. [*quasi* average penny.] In old English charters. Money contributed towards the king's averages, (carriages *cum averiis*); or money given to be freed thereof. *Rostal, Expos. Verb.* cited in *Cowell*. *Blount*. *Spelman*, voc. *Avera*. 2 *Inst.* 35.

AVERS. L. Fr. Beasts or cattle. *Britt.* c. 27. *Litt.* sect. 212.

AVERSIO. Lat. [from *avertere*, to turn away or avert, from *a*, from, and *vertere*, to turn.] In the civil law. An averting or turning away. A term applied to a species of sale in gross or bulk. See *Per aversionem*. And see the dictionaries of *Brissonius* and *Calvin*, where the etymology and meaning of the word are considered at large.

AVERSIO PERICULI. Lat. In old maritime law. An averting or turning away of peril. A name given to the contract of insurance, (*assecuratio*), because one of the parties undertakes to avert the peril of the other on the seas, or takes it upon himself. *Loccenius de Jur. Mar.* lib. 2, c. 5, § 1. *Styppmannus*, part 4, c. 7, n. 262, p. 453. According to *Emerigon* the words signify that the insurer charges himself with, and takes upon him the peril which the things insured run upon the sea. *Tr. des Ass.* ch. 1, pr. See 3 *Kent's Com.* 263.

AVERUM. L. Lat. [from Fr. *avoir*, to have.] In old law. Goods, property, substance, royal treasure. *Spelman*.

A beast of burden. *Id.* See *Aver*.

AVESQUE. L. Fr. Bishop; a bishop. *Kelham*.

AVET. In Scotch law. To abet or assist. *Avetting*; abetting, helping or assisting. *Scotch Dict.* *Tomlins*.

AVEZ. L. Fr. Have [it.] *Yearb.* M. 4 Hen. VI. 26.

AVIA. Lat. In the civil law. A grandmother. *Inst.* 3. 6. 1.

AVIATICUS. L. Lat. [from *avus*, or *avius*, qq. v.] In feudal law. A grandson, (*nepos*.) *Hotom. de Verb. Feud.* *Spelman*, voc. *Abiaticus*.

AVIRANCES. L. Fr. Protestations; adjurations. *Kelham*.

AVIS. Lat. In the civil law. Bird; a bird or fowl. What passed under this word, see *Dig.* 32. 66.

AVIS. L. Fr. Advised. *Estre bien avis*; to be well advised. *Yearb.* P. 4 Hen. VI. 7. See *Aviser*.

AVISAMENTUM. L. Lat. In old English law. Advice; counsel. *De avasamento et consensu consilii nostri concessimus*, (by the advice and consent of our council we have granted,) was the common form of the king's grants. *Cowell*.

AVISARE. L. Lat. In old English law. To advise. *Et quia justiciarii hic nondum avasantur*; and because the justices here are not yet advised. *Yearb.* P. 18 Hen. VI. 9. See *Adviseare*.

AVISEMENT. L. Fr. Advisement; consideration. *Kelham*.

AVISER. L. Fr. In old English law. To advise; to consider; to deliberate; to consult. *Nous volons aviser*; we will advise. *Yearb.* M. 5 Edw. III. 113. *La court se voit aviser de cest issue*; the court will advise, (inform itself) about this issue. P. 6 Edw. III. 68. *Avises vous bien sur v're r'ns*; advise (consider) you well upon your answer. M. 4 Edw. III. 38. *Il voile aviser*; he wished to consider it. *Dyer*, 32 b, (Fr. ed.)

AVIUS. L. Lat. A corruption of the Lat. *avus*, grandfather, used in the barbarian laws. *Hotom. de Verb. Feud. voc. Aviatricus*.

AVIZ. L. Fr. Advice; opinion. *Kelham*.

AVIZANDUM. L. Lat. [from L. Lat. *avisare*, q. v.] In Scotch practice. Advisement; deliberation. "The Lord Justice Clerk, after hearing parties, and taking the case to *avizandum*, pronounced," &c. 2 *Brown's R.* 306. "The Lord Ordinary makes *avizandum*." 7 *Wils. & Shaw's R.* 42. "The sheriff may either forthwith decide thereon, or make *avizandum*." 6 *Bell's Appeal Cases*, 262. It seems to be synonymous with the *advisari*, or *cur. adv. vult* of the English practice.

AVOCAT. Fr. Advocate; an advocate. *Ord. Mar.* liv. 1, tit. 3.

AVOEC, *Avoeckes*, *Auveqs*. L. Fr. With. *Kelham*.

AVOESON, *Avoueson*. L. Fr. An advowson; patronage; foundation. *Kelham*.

AVOID. To render void. "How a deed may be *avoided*, or rendered of no effect." 2 *Bl. Com.* 308.

In pleading. To evade, or escape. A party may confess and *avoid* the allegations in his adversary's pleading. *Steph. Pl.* 58. See *Avoidance*.

AVOIDANCE. A making void, or of no effect. See *Avoid*.

In English ecclesiastical law. A state of being void or vacant. The condition of a benefice, when void of an incumbent; the opposite of *plenarty*. *Jacob*.

In pleading. The evading or escaping from the legal effect of a pleading, by alleging new matter in answer to it. *Steph. Pl.* 190. See *Confession and avoidance*.

AVOIR, *Avoyer*. L. Fr. Property; estate; substance; goods; effects; "having." *Gentz de petit avoir*; persons of small property. *Kelham*.

Ability; means; wealth; money. *Id*.

AVOÏRDUPOIS, *Averdupois*. Fr. [from *avoir du poids*, or *aver de peys*, to have the proper weight; or from *averer*, to verify, to be of the true weight; L. Lat. *averium ponderis*.] The name of the common system of weights in England and the United States, by which goods in general, except precious stones and metals, and medicines, are weighed. *Brande*. The pound *avordupois* consists of sixteen ounces, and is supposed to be so called because it is of *greater weight* than the troy pound. *Cowell*. *Blount*. The term was also anciently applied to merchandises weighed by this weight. *Id. Termes de la Ley*. *Kelham* translates *avoir de pois*, "any bulky commodities," which sense Mr. Barrington approves. *Obs. Stat.* 232, (5th ed.) *Avers de peys*, seems to have had the same meaning. *Britt. c.* 21, fol. 38 b.

This kind of weight has been expressly adopted in some of the United States by statute. 1 *N. Y. Rev. St.* [608] 617, §§ 9, 10.

AVORTARE. L. Lat. In old European law. To miscarry; to bring forth an abortion. *LL. Wisegothor.* lib. 6, tit. 3, c. 6. *Spelman*.

AVOUCHER. L. Fr. and Eng. [L. Lat. *advocatio*, from *vocare*, to call or summon.] In old English practice. The calling or summoning into court by a tenant, of a person bound to him to warranty; that is, either to defend the right against the demandant, or to yield him other lands, &c., in value. *Co. Litt.* 101 b. Called by Lord Coke "a word of art," and employed by him as an example of the necessity of using "significant words, framed by art, which are called *vocabula artis*, though they be not proper to any language." *Id. ibid.* See *Voucher*.

AVOUE. In old French law. A feudal chief, who acted as protector of a church or monastery; the suzerain of the fief. *Steph. Lect.* 236.

AVOUTERIE. L. Fr. Adultery. *Britt.* c. 42.

AVOW, *Advow.* [L. Lat. *advocare.*] In pleading. To acknowledge and justify an act done. See *Avowry*.

AVOWE, *Avoue.* L. Fr. An avowee, advowee, or patron of a church; he to whom the right of advowson belongs. *Britt.* c. 95. *Stat. Westm.* 1, c. 1.

AVOWER. L. Fr. To avow, or acknowledge; to justify; to maintain. *L. Fr. Dict.*

To challenge. *Kelham.*

AVOWESON, *Avowson, Avowesoun.* L. Fr. An advowson. *Britt.* c. 72. *Yearb. H. 1 Edw. II.* p. 3.

AVOWRY. [L. Lat. *advocatio*, q. v.] In pleading. A pleading in the action of replevin, by which the defendant *avows* (*advocat*), that is, acknowledges the taking of the distress or property complained of, where he took it in his own right, and sets forth the reason of it; as for rent in arrear, damage done, &c. 3 *Bl. Com.* 149. 1 *Tidd's Pr.* 645.

AVOWTERER. In old English law. An adulterer. *Termes de la Ley.* See *Advowtry*.

AVOWTRY. In old English law. Adultery. *Termes de la Ley.* See *Advowtry*.

AVULSION. [Lat. *avulsio*, from *avellere*, to pluck or tear away.] In the civil and common law. A tearing off, severing, or forcible disruption; the sudden removal of soil from one man's estate to another's, by the immediate and manifest power of a stream, (*vi fluminis.*) *Dig.* 41. 1. 7. 2. *Inst.* 2. 1. 21. A species of adjunction (*adjunctio*), produced by a stream of water carrying away a large piece of a person's land at once, and depositing it on that of another, [his neighbor, *vicinus.*] In this case, however, the property in the land so torn away is not changed until it has adhered so long to the other's land as to become part of it. Or, in the language of the Institutes, after it has adhered so long that the trees which it brought with it have taken root in the neighbor's land, such trees become his property. *Inst.* 2. 1. 21. This doctrine has been admitted into the common law ever since the time of Bracton. *Bract.* fol. 9. *Schultes' Aquatic Rights*, 116. 1 *Crabb's Real Prop.* 110. *Angell on Water-Courses*, § 60. *Ang. on Tide-Waters*, 269.

AVUNCULUS. Lat. [Gr. *μητρὸς ἀδελφός*, *θετός*.] In the civil law. A maternal uncle;

a mother's brother. *Inst.* 3. 6. 1. 2 *Bl. Com.* 230.

Avunculus magnus; a great uncle, a grandmother's brother, (*avie frater.*) *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15. *Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

Avunculus major; a greater uncle; a great grandmother's brother, (*proavie frater*;) a father's or mother's great uncle. *Dig.* 38. 10. 10. 16. Called *proavunculus.* *Id.* 38. 10. 1. 7.

Avunculus maximus; a greatest uncle; a great great grandmother's brother, (*abavie frater*;) a father's or mother's *avunculus major.* *Dig.* 38. 10. 10. 17. Called *abavunculus.* *Id.* 38. 10. 3.

AVUS. Lat. In the civil law. A grandfather. *Inst.* 3. 6. 1.

AWAIT, *Awayte.* In old statutes. A waylaying, or lying in wait to do mischief. *Stat.* 13 Ric. II. c. 1. *Cowell.* *Blount.*

AWEIT. L. Fr. Await. *LL. Gul. Cong.* l. 1.

AWARD. [L. Lat. *awarda*, *awardum*; L. Fr. *agard*, from Fr. *agarder*, to be guarded, observed or kept; so called because it is imposed on the parties to be observed or kept by them; (*quod ad observandum seu custodiendum, partibus imponitur.*) *Spelman.*] The judgment or decision made and given by an arbitrator or arbitrators, or an umpire, respecting any matter in dispute submitted to them. 3 *Bl. Com.* 16. *Billings on Awards*, 119. *Watson on Arb.* 174. *Russell's Arbitrator*, 234.

In old English law. The verdict of a jury. *Spelman*, voc. *Awardum*.

AWARDA, *Awardum.* L. Lat. In old English law. An award. *Spelman.*

AWAY-GOING CROP. In the law of leases. A crop sown during the last year of tenancy, but not ripe until after its expiration. *Broom's Max.* [306.]—Corn growing upon lands held for a term, which, before the expiration of such term, has been sown by the tenant and farmer upon any part of such lands, being arable land, &c.; and which has been left standing and growing upon such lands, at the expiration of such term. *Beavan v. Delahay*, 1 *H. Bl.* 5.

AWEROUST, *Awroust, Averust, Awrust, Aworust, Averust.* L. Fr. In old English law. Doubt; uncertainty; ambiguity. *Et issint les justices fur' en awrust*; and so the justices were in doubt. *Yearb.* P. 3 Hen. VI. 16. P. 2 Hen. VI.

3. *La court fuit en aworust.* M. 9 Edw. III. 5. *Keilw.* 22.

AWES. L. Fr. Waters. *Kelham.*

AWM, *Awme, Awame.* In old English statutes. A measure of Rhenish wine, or vessel containing forty gallons. *Stat. 1 Jac. c. 33.* 12 *Car. II. c. 4.* *Cowell. Blount. Termes de la Ley.* But *Cowell* refers to "an old printed book," as showing that the *awame* of Dordreyght was fifty gallons, and that of Antwerp, thirty-five. The *aam, aum, or ahm,* is still employed as a measure for liquids at Amsterdam, Frankfort, and other places on the Continent. At Amsterdam, it is nearly equal to forty-one English wine gallons; at Frankfort, to thirty-nine. *McCulloch's Dict.*

AWNINE, *Awenhine.* Sax. A domestic. See *Agenhine.*

AWOOST. L. Fr. August. *Kelham.*

AWYSE. O. Sc. Advice. 1 *Pitcairn's Crim. Trials*, part 1, p. 107.

ΑΙΣΙΩΣΙΣ, Αἰσιωσις. Gr. In the civil law. A petition to the emperor, the answer to which was called a rescript. *Tayl. Civ. Law*, 230. *Dig.* 14. 2. 9.

AY. L. Fr. With; over. *Kelham.*

AYANT CAUSE. In French law. An assignee. *Bouvier.*—A successor to property; a representative, (not an heir.) *Poth. Obl.* part 1, ch. 1, sect. 1, art. 1, § 2.

AYD, *Ayde.* See *Aid.*

AYDONC, *Aydonk, Aydonges.* L. Fr. Then. *Kelham. Fet Assaver*, § 24. See *Adonques.*

AYL. L. Fr. Yea; yes. *Kelham.* See *Oyl.*

AYLE, *Ael, Aieul.* L. Fr. In old English law. Grandfather; a grandfather. *Ayle, pere et fitz*; grandfather, father and son. *Dyer*, 101 b, (Fr. ed.)

AYLE, *Ayel, Aiel, Aile.* L. Fr. In old English practice. The name of a writ (*Lat. breve de avo*), which lay when a man's grandfather or grandmother was seised of lands in fee simple on the day of his or her death; and a stranger entered on that day, and abated, or dispossessed the heir of his inheritance. *F. N. B.* 221 D. 3 *Bl. Com.* 186. Abolished by statute 3 & 4 Will. IV. c. 27, s. 36.

AYLOURS. L. Fr. Besides; elsewhere; otherwise. *Kelham.* See *Ailors.*

AYRE, *Aire.* O. Sc. In old Scotch law. Eyre; a circuit, eyre or iter. *Bell's Dict. voc. Justice ayres.* *Skene de Verb. Sign. voc. Iter.* See *Aire.*

AYRER. L. Fr. To plough. *Kelham.*

AYUNTAMIENTO. Span. In old Spanish law. An association. *Las Partidas*, part 6, tit. 3, l. 4.

In Spanish American law. A municipal council; the common council of a town. 1 *White's Recop.* 416. 12 *Peters' R.* 442, note.—The governing body of a town or municipality, having charge of its police and financial affairs. *Hemphill, C. J. 1 Texas R.* 696.

B

BACBEREND, *Bacberende, Backberend, Backberynde.* Sax. Bearing or carrying upon the back, (*tergoferus*;) an open or manifest robber or thief, (*latro manifestus*.) *Spelman.* A term applied, in early English law, to a thief caught with the thing stolen upon his back, (*latrocinium deferens a tergo*); as *handhabend* or *hondhabend* signified one who had it in his hand, (*qui in manu rem furatam habuerit*). *Id.* Both these terms are used by Bracton as instances or proofs of what was termed *furtum manifestum*, apparent or open theft, where the thief was caught with the thing stolen in his possession. *Bract. fol.* 150 b, 154 b, 122 b. *Fleta*, lib. 1, c. 38, § 1. 2 *Reeves' Hist. Eng. Law*, 40. See *Furtum manifestum, Handhabend, Open-theft.*

BACKBEAR. In forest law. Carrying on the back. One of the cases in which an offender against vert and venison might be arrested, as being taken with the mainour or manner, or found carrying a deer off on his back. *Manwood. Cowell.* See *Mainour.*

BACK-BOND. In Scotch law and conveyancing. An instrument equivalent to a declaration of trust in English conveyancing. A deed which, in conjunction with an absolute disposition, constitutes a trust. 1 *Kames' Equity*, 108.

BACKING. In practice. Endorsement. In England, where a warrant of a justice of the peace in one county is to be executed in another, it must first be endorsed by the justice in such other county, which is termed *backing the warrant*. 4 *Bl. Com.* 291. A similar practice exists in Scotland. *Bell's Dict.* It prevails also in some of the United States, though the term *backing* is rarely used. 2 *N. Y. Rev. Stat.* [707,] 590, § 5.

BACULUS. Lat. In old English practice. A staff, rod or wand, anciently used in the ceremony of making livery of seisin, where there was no building on the land.

Fiat seysina per fustim et per baculum; seisin should be made by rod and staff. *Bract.* fol. 40. *Fleta*, lib. 3, c. 15, § 5. *Baculus nuntiatorius*; a warning or summoning stick. A white stick or wand, by erecting which on the grounds of a defendant in real actions, he was anciently warned or summoned to appear in court at the return of the original writ. 8 *Bl. Com.* 379.

A baton, such as combatants fought with in the *duellum*. *Frangitur eorum baculus*; their baton is broken. A term anciently applied to persons convicted of a felony on their own confession, signifying that they could not bring an appeal against any one. *Bract.* fol. 152. See *Fleta*, lib. 1, c. 38, § 16. 2 *Reeves' Hist. Eng. Law*, 43. See *Baston*.

BAD ENGLISH, either in spelling or grammar, will not vitiate a deed, bond or bill. See *Mala grammatica*, &c. "I promise to pay 100*l.* if the plaintiff mare such a widow," was held a good bill. *Freem.* 541.

BAD LATIN, in old pleading, might be cured by an *Anglicè*. *Freem.* 446.

BADGE. [Lat. *indicium*.] A mark, sign or token; an indication; a distinctive mark. A "badge of fraud" is a circumstance attending a transaction, or a clause or provision in an instrument, which raises or tends to raise a presumption of fraud against it. See 2 *Kent's Com.* 520, 527. *Burrill on Assignments*, 433, (2d ed.) "Badges of equity." 1 *Rep. in Ch.* 128.

BAGA. L. Lat. [L. Fr. *bague*.] In old English law. Bag; a bag. *Et d'd envers euz unam bagam, ove C. l. in ead' бага content'*. *Yearb. M.* 18 Hen. VI. 5.

"BAGGAGE," under a contract of a carrier of passengers, does not embrace samples of merchandise carried by the passenger in a trunk, with a view of enabling him to make bargains for the sale of goods. 6 *Hill's (N. Y.) R.* 586. Nor does it embrace money in the trunk, and articles usually carried about the person, and not as baggage. *Bronson, J. Id.* 589. Otherwise, however, as to articles for the personal use, convenience, instruction or amusement of the passenger on the way, and usually carried as baggage. *Id.* 590. See 2 *Kent's Com.* 601, and notes.

BAIL, *Baile, Baille*. Fr. and L. Fr. [from *bailer*, to deliver.] Delivery of land; livery. Bail de la seisine; livery of seisin. *Britt.* c. 33. *Nul bail ne nul seisine*; no livery and no seisin. *Id.* c. 40. Delivery

to a lessee or termor. *Guyot, Inst. Feod.* c. 6, s. 16.

Delivery, in general. *Le bail des escripts*; the delivery of the writings. *Britt.* c. 34.

Keeping or custody; guardianship. *En sa baille*; in his keeping. *Id.* c. 66.

Bail, in the modern sense; as embracing the ideas both of delivery and of keeping. *Ceux que sont lesses par bail à ascuns, à respondre pur euz, cors pur cors*; those who are let by [to] bail to any, to answer for them, body for body. *Id.* c. 125.

To BAIL, *Bayl*. [L. Fr. *bailler*; L. Lat. *balliare*; from Gr. *βάλλω*, to send, or deliver.] In old English law. To deliver, commit or entrust a thing to another, (*rem alteri tradere, vel committere*.) *Spelman*, voc. *Balliare*. The word is constantly used in this sense in the old books. "If a feme sole bail goods to one, and marry with the bayle," [bailee.] *Finch, Law*, b. 1, ch. 3, num. 55. "Where I bail my goods to J. S. to bail over to T. K." *Perkins*, ch. 11, s. 815. "If I bayl to you an obligation, to re-bail the same to me before such a day." 3 *Leon.* 150, case 200.

The modern terms *bailment*, *bailor* and *bailee* are derivatives of this now obsolete word.

In practice. To deliver a person from arrest, or out of custody, to the keeping of other persons, on their undertaking to be responsible for his appearance at a day and place certain. *Bract.* fol. 123. To discharge a person from arrest, on his finding sureties for his appearance at a certain time and place. A person bailed on civil process is very commonly said to be *at large*, but in contemplation of law this is not strictly correct; he being always accounted to be in the custody of his sureties, until surrendered by them, or finally discharged. See *Bail*.

To become bail for another. 1 *Leon.* 94.

BAIL. [L. Fr. *bail, baile, baille*; L. Lat. *ballium, bailium, baila*.] In old law. Safe keeping, or protection; (*custodia, protectio, tutela*.) *Spelman*, voc. *Ballium*. *Co. Litt.* 61 b. See *Bail*, L. Fr.

In practice. A delivery into safe keeping or protection, (*traditio in ballium*.) *Spelman, ub. sup.* A delivery of a person arrested, out of the custody of the law, into the safe keeping or friendly custody of persons who become sureties for his return or appearance. *Id. ibid.*

The sureties themselves, into whose custody the party discharged from actual arrest

is supposed to be *delivered*. 3 *Bl. Com.* 290. *Finch, Law*, b. 4, ch. 44, p. 446. This is the only sense in which the word *bail*, as a noun, is now used; the act of bailing being still expressed in the bail-piece, by these words:—"C. D. is *delivered to bail*, [in the old forms, *traditur in ballium*] on the taking of his body, to J. N. and J. S." &c. See *Bail-piece*, *Bail to the sheriff*, *Special bail*, *Common bail*.

* * The radical meaning of *bail* is undoubtedly, a *delivery*, (from Fr. *bailler*, to deliver;) or, in its present use, a person to whom another is *delivered*, under certain stipulations; just as a *bailee*, (which is essentially the same word) in another branch of law, is a person to whom goods are *delivered* for a certain purpose. See *Bailee*. The sense of *safe keeping*, which also enters into its meaning, is derived from the old French and Italian law, in which *baillie*, and *balio* (*baila*, *bailium* and *ballium*,) signified guardianship, wardship, or protection. See *Baila*, *Balium*. Bail are regarded in law as the *keepers* of their principal, and are said to have him always "in a string," which they may pull whenever they please; and render him in their discharge. 6 *Mod.* 131. 1 *Tidd's Pr.* 285.

BAIL TO THE SHERIFF, or BAIL BELOW. In practice. Persons who undertake that a defendant, arrested upon mesne process in a civil action, shall duly appear to answer the plaintiff; such undertaking being in the form of a bond given to the sheriff, termed a *bail bond*, (q. v.) 3 *Bl. Com.* 290. 1 *Tidd's Pr.* 221. This kind of bail is called *bail to the sheriff*, because given to that officer, and for his security; and *bail below*, because subordinate or preliminary to bail to the action or special bail, which is termed *bail above*. *Id. ibid.* See *infra*.

BAIL TO THE ACTION, BAIL ABOVE, or SPECIAL BAIL. In practice. Persons who undertake jointly and severally in behalf of a defendant arrested on mesne process in a civil action, that if he be condemned in the action, he shall pay the costs and condemnation, (that is, the amount which may be recovered against him,) or render himself a prisoner, or that they will pay it for him. 3 *Bl. Com.* 291. 1 *Tidd's Pr.* 245. This undertaking of the bail is termed their *recognizance*, and is effected by executing and acknowledging what is called a *bail-piece*. *Id. ibid.* See *Bail-piece*.

BAIL, COMMON. In practice. A fic-

titious proceeding, intended only to express the appearance of a defendant, in cases where special bail is not required. It is put in in the same form as special bail, but the sureties are merely nominal or imaginary persons, as John Doe and Richard Roe. 3 *Bl. Com.* 287.

BAILA. L. Lat. In old law. Protection; guardianship; safe keeping; bail. *In testamento relictus sub baila, seu tutela*, &c.; being left by the will under the bail or protection, &c. *Anon.* cited in *Spelman*, voc. *Bailus*. See *Balia*.

BAILABLE. In practice. Requiring, authorizing or admitting of bail; entitled to be discharged on bail. A *bailable action* is one in which a defendant may be obliged either to find bail on his arrest, or go to prison. A *non-bailable action* is one in which bail cannot be required. *Bailable process* is that upon which a defendant may be held to bail. 1 *Arch. Pr.* 328, 337. A *bailable offence* is one for which the offender may be admitted to bail. 4 *Bl. Com.* 298. A *non-bailable offence* is one where bail will not be allowed, but the offender must go to prison. A *bailable person* is one who when accused of an offence, is entitled to be admitted to bail. *Id.* 297.

BAIL BOND. In practice. A bond given to the sheriff, on the arrest of a defendant upon mesne process in a civil action, in a penalty of double the sum endorsed on the writ, and with a condition that the defendant shall appear, and put in special bail within a certain time specified. 1 *Tidd's Pr.* 223, 224. It is usually executed by the defendant himself, with two sureties, although one is sometimes accepted as sufficient. *Id. ibid.* *Petersdorff on Bail*, 203, *et seq.*

BAIL COURT. In English law and practice. An auxiliary court of the court of Queen's Bench at Westminster, wherein points connected more particularly with pleading and practice are argued and determined. *Holthouse*.

BAIL-PIECE. In practice. A formal entry or memorandum of the recognizance or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. 3 *Bl. Com.* 291. 1 *Tidd's Pr.* 250.

BAILEE, Baylee. [from Fr. *bailler*, *bailier*, to deliver.] A person to whom goods are delivered or bailed for a certain pur-

pose. See *Bailment*. *Finch, Law*, b. 2, ch. 18.

BAILER, *Bayler, Bailler*. L. Fr. In old English law. To bail; to deliver. *Il baila un escript al def^r à rebailer*; he bailed a writing to the defendant, to rebail. *Yearb. T. 3 Edw. III. 38. Baila la cist à rebailer*. M. 5 Edw. III. 24. *Sicome jeo baile à vous xxi. à bailer ouster*. *Dyer*, 21 b, (Fr. ed.) See *Bailler*.

BAILIE, *Baillie*. In Scotch law. A municipal magistrate, corresponding with the English alderman. *Brande. Encycl. Amer.*

A bailiff; a ministerial officer to whom writs are directed for service. *Home's Brit. Ant.* 61. *Bell's Dict.*

BAILIFE, *Baillif*. L. Fr. A bailiff; a ministerial officer, with duties similar to those of a sheriff. *Per viscont ou per autre bailife le roy*; by a sheriff, or by another bailiff of the king. *Stat. Westm.* 1, c. 17. See *Id.* c. 15. *Britt.* c. 21.

The judge of a court. *Stat. Westm.* 1, c. 35. 2 *Inst.* 229.

A municipal magistrate. *Maire et bailifes*; mayor and bailiffs. *Stat. Gloc.* cc. 12, 15.

BAILIFF. [L. Fr. *bailife, baillif, baili, baily, bayly, baylie*; L. Lat. *balivus, ballivus, baillius*; from Fr. *bailler*, to deliver, commit or entrust; Gr. *βαλειν, βάλλειν*. *Spelman*.] A person to whom some authority, care, guardianship or jurisdiction is delivered, committed or entrusted, (*commissarius*); one who is deputed or appointed to take charge of another's affairs, (*qui rebus alienis curandis deputatur*); an overseer or superintendent, (*præpositus*); a keeper, protector or guardian, (*custos, tutor*); a steward, (*villicus*). *Spelman*, voc. *Balivus*.

A sheriff; a sheriff's officer or deputy. 1 *Bl. Com.* 344, 345.

The chief magistrate of a town. *Cowell*, voc. *Mayor, Portgreve*.

A person to whom the charge, superintendence, or management of some estate or property is entrusted; and who is liable to account to the owner for the rents, profits, &c., which he may have received. *Tomlins. Whishaw*. See *Ballivus*.

* * The word *bailiff* is of Norman origin, and was applied in England at an early period, (after the example, it is said, of the French,) to the chief magistrates of counties or shires, such as the alderman, the reeve or sheriff, and also of inferior ju-

risdictions, such as hundreds and wapentakes. *Spelman*, voc. *Balivus*. 1 *Bl. Com.* 344. See *Bailli, Ballivus*. The Lat. *ballivus* occurs indeed in the laws of Edward the Confessor, but *Spelman* thinks it was introduced by a later hand. *Balliva*, (bailiwick,) was the word formed from *ballivus*, to denote the extent of territory comprised within a bailiff's jurisdiction; and *bailiwick* is still retained in writs and other proceedings, as the name of a sheriff's county. 1 *Bl. Com.* 344. See *Balliva*. The office of bailiff was at first strictly, though not exclusively, a judicial one. In France, the word had the sense of what *Spelman* calls *justitia tutelar*. *Balivus* occurs frequently in the Regiam Majestatem, in the sense of a judge. *Spelman*. In its sense of *deputy*, it was formerly applied in England to those officers who, by virtue of deputation, either from the sheriff or the lords of private jurisdictions, exercised within the hundred, or whatever might be the limits of their bailiwick, certain judicial and ministerial functions. With the disuse of private and local jurisdictions, the meaning of the term became commonly restricted to such persons as were deputed by the sheriff to assist him in the merely ministerial portion of his duty; such as the summoning of juries and the execution of writs. *Brande*. In modern practice, these are either *bailiffs of hundreds*, or *bound bailiffs*. The word *bailiff* is also applied, in England, to the chief magistrates of certain towns and jurisdictions; to the keepers of castles, forests and other places; and to the stewards or agents of lords of manors. *Cowell. Blount*. In the United States, it is rarely used, except sometimes to signify a sheriff's officer or constable, and a party liable to account to another for the rents or profits of some property entrusted to him.

BAILIFFS ERRANT. [L. Lat. *ballivi errantes, seu itinerantes*.] In English law. Bailiffs are so called in the old books, from their *going about* the county, in the execution of their office. *Spelman*, voc. *Balivus*. *Cowell*.

BAILIFFS OF FRANCHISES. [L. Lat. *ballivi franchisiarum*.] In English law. Officers who perform the duties of sheriffs within liberties or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff. *Spelman*, voc. *Balivus*. *P. Cyclopædia*. See *Liberty, Non omittas*.

BAILIFFS OF HUNDREDS. [L. Lat. *ballivi hundredorum.*] In English law. Officers appointed over hundreds, by the sheriffs, to collect fines therein, and summon juries; to attend the judges and justices at the assizes and quarter sessions; and also to execute writs and process in the several hundreds. 1 *Bl. Com.* 345. 3 *Steph. Com.* 29. *Bract.* fol. 116. See *Bound bailiffs.*

BAILIFFS OF MANORS. In English law. Stewards or agents, appointed by the lord (generally by an authority under seal,) to superintend the manor, collect fines and quit rents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest. *P. Cyclopædia.* *Cowell.*

Anciently, the bailiff (*ballivus*.) was a distinct officer from the steward, (*senescallus*.) and immediately subordinate to him. A very minute and curious description of the duties appertaining to these old offices, may be found in *Fleta*, lib. 2, cc. 72, 73.

BAILIUM, Bailium. L. Lat. [O. Fr. *baillie.*] In old law. Protection; custody; bail. *Spelman.* See *Bailium.*

The office, authority or jurisdiction, (Fr. *baillage*) of a bailiff, (*balivus* or *balivus*.) *Id.*

BAILIVIA. L. Lat. [from *balivus*, q. v.] In old law. A bailiff's jurisdiction; a bailiwick; the same as *bailium*. *Spelman.* See *Bailiwick, Bailiva.*

BAILIWICK, Bailiwick. [L. Lat. *baliva, baliva, bailivia, balia, ballia, balivatus*; L. Fr. *baillie, bailly*. Derived by some from Fr. *bailli*, a bailiff; and Lat. *vicus*, a village.] The district or jurisdiction of a bailiff or sheriff; a county, of which the sheriff is, or formerly was, the bailiff. The word is still retained in civil process, in this sense. According to Blackstone, it was introduced into the English law by the princes of the Norman line. 1 *Bl. Com.* 344. The word *sheriffwick* is sometimes used in the old books. *Doct. & Stud.* Dial. 2, ch. 42, p. 232.

In old English law. A liberty, or exclusive jurisdiction, which was exempted from the sheriff of the county, and over which the lord of the liberty appointed a bailiff with such powers within his precinct as an under-sheriff exercised under the sheriff of the county. *Whishaw.*

BAILLER, Bailer, Bayler. L. Fr. To deliver, commit or entrust. *Celles chartres soient bailles a cheescun viscont Dengleterre*; these charters shall be delivered to every sheriff of England. *Artic. sup. Chart.* c. 1. See *To Bail.* *Soit baille aux seigneurs*; let it be delivered to the lords. The endorsement made upon a bill by the clerk of the house of commons, when it has passed the house, and is to be sent up to the lords. *P. Cyclopædia.* *Hob.* 111 a.

To lease. *Si home bailla son tenement a terme des ans*; if a man lease his tenement for a term of years. *Stat. Glouc.* c. 11.

To lend. *Sicome joo bayle a un home mes barbits*; as if I lend to a man my sheep. *Litt.* sect. 71.

BAILLI. Fr. [from *bailier*, to deliver.] In old French law. A person to whom a judicial authority and jurisdiction were assigned or delivered by a superior.* The term was applied both to those high officers who were appointed to act as judges in different districts of the kingdom, and to the inferior officers who presided in the lords' courts. 1 *Rob. Charles V.* Appendix, note xxiii. *Esprit des Loix*, liv. 38, c. 42. See *Bailiff, Missus dominicus.*

BAILLIE, Bailly. L. Lat. A bailiwick. *Britt.* c. 75. *Yearb.* 8 Edw. III. 7.

Jurisdiction; province. *LL. Gul. Cong.* l. 2.

BAILLIUM. L. Lat. In old English law. Bail; delivery. *Tenebunt civitatem London de baillio domini regis*; they shall hold the city of London of the bail of the lord the king. *Conv. inter Reg. Johan. et barones*; *Blackst. Mag. Carta*, p. 31.

BAILMENT. [from Fr. *bailier*, to deliver.] A delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 *Bl. Com.* 451.—A delivery of goods for some particular purpose, or on mere deposit, upon a contract express or implied, that after the purpose has been performed, they shall be re-delivered to the bailor, or otherwise dealt with according to his directions, or, (as the case may be) kept till he reclaims them. 2 *Steph. Com.* 129.—A delivery of goods in trust upon a contract expressed or implied, that the trust shall be duly executed, and the goods restored by the bailee, as soon as the purpose of the bailment shall be answered. 2 *Kent's Com.* 558.—A delivery of a thing

in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. *Story on Bailm.* § 2.

* * All these definitions, except the last, are based, with some variation, upon the two definitions of Sir William Jones:—"A delivery of goods on a condition, expressed or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they were bailed shall be answered." *Jones on Bailm.* 1. "A delivery of goods in trust, on a contract expressed or implied, that the trust shall be duly executed, and the goods re-delivered as soon as the time or use for which they were bailed shall have elapsed or be performed." *Id.* 117. A very prominent feature of these definitions is the *restoration or re-delivery* of the article bailed to the bailor, which they declare to be one of the objects of the contract on the part of the bailee. This idea of *restoration* is entirely dropped by Sir William Blackstone in his definition, but is taken up again by Mr. Stephen, though with considerable modification, and is expressly adopted by Chancellor Kent, while, on the other hand, no reference is made to it in the definition of Judge Story. It is clear that the restoration of the thing bailed to the bailor, either *in specie*, or in a new form agreed upon, does in fact constitute a part of the contract in nearly all the varieties of bailment; but it is no less clear that one species of bailment, and that perhaps the most important of all, (the *locatio operis mercium vehendarum*, or bailment of goods to be carried for hire,) is quite free from any such contract on the part of the bailee. The difficulty in defining *bailment* is to explain, with sufficient clearness, what the contract is, and to avoid at the same time going into particulars not common to every one of its varieties.

Among the older definitions, that of Finch is the most simple and comprehensive. "Bailment is a delivery of goods in possession, and is either to keep or employ." *Finch's Law*, b. 2, ch. 18.

BAILMENT. In old practice. The becoming bail for another. Howell & Trevannion's case, 1 *Leon.* 94. Now obsolete.

BAILOR. The party who *bails* or delivers goods to another, in the contract of bailment. *Finch, Law*, b. 2, ch. 18. "Bailor and bailee." 3 *Leon.* 38. See *Bailment*.

BAILOUR. L. Fr. A surety. *L. Fr. Dict.*

BAILY, Bayly, Baylie. In old English law. A bailiff. *Co. Litt.* 61 b. *Cro. Jac.* 410. Used both as a French and an English word.

A species of attorney. Parties sometimes appeared in court by their bailies or bailiffs. *Yearb.* P. 8 Edw. III. 1. *Touts forprise Henry et Alice sont cy per baylee*; all but Henry and Alice are here by bailly. H. 10 Edw. III. 7. But though a bailly might appear for another, he could not conduct the pleadings. See H. 3 Edw. III. 1.

A bailee; one to whom a thing is bailed. *Dyer*, 22, (Fr. ed.) *Baily de un chival.* *Id.* 121 b.

This is supposed by Lord Coke (*ub sup.*) to be a Saxon word, signifying a safe keeper or protector. But it seems obviously formed from the Fr. *baillie* or *bailli*, (q. v.) *Spelman*, voc. *Balivus*.

BAIR-MAN. In old Scotch law. A bankrupt; otherwise called *dывour*, (q. v.) *Skene de Verb. Sign.* voc. *Dывour*.

BAIRNS. Sc. In Scotch law. A known term, used to denote one's whole issue. *Ersk. Inst.* b. 3, tit. 8, § 48. But it is sometimes used in a more limited sense. *Bell's Dict.*

BAIRNS' PART OF GEAR. In Scotch law. The share of the father's property to which, by law, the child is entitled. *Bell's Dict.* A third part of a defunct's free movables, debts deducted, if his wife survive, and a half if there be no relict, due to his children. *Wharton's Lex.*

BAIULUS, Bajulus. L. Lat. [Gr. *βατολος*.] A protector, keeper, guardian, tutor or instructor. An officer at Constantinople, who had the education and care of the Greek emperor's sons. *Spelman*. Supposed by some to be the origin of the Lat. *ballivus*, or *balivus*, and English *bailiff*. *Ducange*.

BALÆNA, Balena, Ballena. L. Lat. In old English law. One of the "royal fish," the head of which belonged to the king, and the tail to the queen. *Bract.* fol. 120 b. *Fleta*, lib. 1, c. 46. A large fish, (*grossus piscis*.) sometimes considered to be a kind of whale. 1 *Bl. Com.* 222. But in the Black Book of the Admiralty, "whales and balens" are both mentioned. *Hale de Jur. Mar.* pars 1, c. 7. In Bracton, the word is written *ballena*. In an exchequer record of 24 Edw. I where a

writ was issued to the sheriff to take possession of a whale which had come ashore in the county of Essex, the proper Latin word *cete* is made use of. *Mem. in Scacc.* H. 24 Edw. I.

BALANCE. A remainder, or sum remaining due on an account; a sum expressing the difference between the debtor and creditor sides of an account.

BALDIO. Span. In Spanish law. Waste land; land that is neither arable nor pasture. *White's New Recop.* b. 2, tit. 1, c. 6, § 4, and note.

BALEUCA, Baleuga, Banleuca. See *Banleuca*.

BALIA, Ballia. L. Lat. In old law. A bailiwick; the district, territory or jurisdiction of a bailiff. *Spelman*, voc. *Balius*. See *Ballia*.

BALISE. Fr. In French marine law. A buoy. *Ord. Mar.* liv. 1, tit. 1, art. 4.

BALIUM, Ballium. L. Lat. [Ital. *balio*, from Gr. *βαλειν*, or *βαλλειν*, to commit.] In old Italian law. Protection; guardianship; education; ward. *Pupilli qui protectione balii indigere noscuntur, ipsorum balium cum administratione bonorum eis contingentium curia nostra suscipiat*; whatever minors shall be known to need the protection of guardianship, our court shall undertake their guardianship, with the management of the property belonging to them. *Constitut. Neapolit.* lib. 2, tit. 7, *apud Spelman*, voc. *Balius*. See *Balium*.

BALIUS. L. Lat. In old law. A tutor, protector or guardian. *Spelman*.

BALIVA, Balliva. L. Lat. In old English law. A bailiwick, or jurisdiction. *Ubi balivam habeat vel jurisdictionem*; where he has a bailiwick or jurisdiction. *Stat. Marlbr.* c. 2. 2 *Inst.* 105. See *Balliva*.

BALIVATUS. L. Lat. In old English law. A bailiwick; a district, province or county. *Spelman*. *Cowell*.

BALIVIA, Ballivia. L. Lat. In old English law. A bailiwick. *Non est inventus in ballivia sua*; is not found in his bailiwick. *Fleta*, lib. 2, c. 64, § 12. See *Balliva*.

BALIVUS, Ballivus. L. Lat. In old English law. A bailiff. *Nullus balivus de cætero ponit aliquem ad legem manifestam*; no bailiff shall henceforth put any man to his open law. *Magna Charta*, c. 28. See *Id.* c. 35. Blackstone's edition has *ballivus*, (q. v.)

Balivi; bailiffs; sheriff's officers. *Stat. Westm.* 2, c. 37.

BALLENÄ. L. Lat. A large fish mentioned in Bracton. *Bract.* fol. 120, 120 b. See *Balæna*.

BALLIA. L. Lat. In old English law. A bailiwick. *Artic. Mag. Cart. Johan.* c. 40. *Mag. Cart. Johan.* c. 50.

BALLIARE. L. Lat. In old law. To bail. *Spelman*.

BALLIUM, Balium. L. Lat. In old law and practice. Protection; custody; guardianship. *Spelman*. *Infantem dimissum sub ballio et tutela*, &c.; sent away when a child, under the bail and protection, &c. *Id.*

Bail or delivery; the delivery or bailing of a person out of prison, under sureties for his appearance, (*sub vadimonio*.) *Spelman*.

Bail or sureties for a defendant's appearance, and to whom he was delivered for safe keeping. *Tradere in ballium*; to deliver to bail. *Bract.* fol. 123. *Stat. Marlbr.* c. 28, [27.] *Dimittere per ballium*; to discharge by or on bail. *Bract.* fol. 123. *Imposuit commune ballium*; put in common bail. 1 *Salk.* 8.

Delivery of goods. *Catalla felonum per visum et ballium coronatoris tradantur*; the chattels of felons shall be delivered by the view and bail of the coroners. *Chart.* 3 *Edw.* I. cited in *Cowell*.

An outer bulwark of a fortified place; the area, or court-yard, contained within such enclosure. Hence the English word *bailey*, applied to places and buildings, as the Old Bailey. *P. Cyclopædia*.

BALLIVA, Baliva. L. Lat. In old law and practice. A bailiwick; the district or territory under the jurisdiction of a sheriff; a sheriff's county. *Co. Litt.* 61 b. *Infra-nominatus A. B. non est inventus in balliva mea*; the within named A. B. is not found in my bailiwick. *Kitch. Ret. Brev.* 287. This is still, in strictness, the proper form of a sheriff's return to process, where the party ordered to be arrested has not been found; though the emphatic words "not found" are all that are usually endorsed on the writ.

A district or place of jurisdiction, in general. *Art. Mag. Cart. Johan.* c. 40. *Fleta* uses *ballivia*. See *Balivia*, *Baliva*.

BALLIVUS, Balivus, Ballius, Ballivus. L. Lat. [L. Fr. *bailife*, *bailif*, *bailli*.] In old law. A bailiff, baily or bailie; a person to whom some authority or trust is

committed or deputed. *Spelman. Cowell. Co. Litt.* 61.b.

A ministerial officer of justice. In this general sense, the word includes sheriffs and constables. *Bract. fol. 117. Fleta, lib. 2, c. 32. Magna Charta, cc. 8, 17, 28, 35. 2 Inst. 44.*

A sheriff's officer or deputy. *Bract. fol. 116.*

A steward. *Glanv. lib. 11, c. 1. 2 Inst. 44.* An officer under a steward. *Fleta, lib. 2, c. 73.*

One who acted for, or represented another, with an authority, however, less than that of an attorney. *Bract. fol. 212 b.*

A judge. *Reg. Majest. lib. 2, c. 4. Skene de Verb. Sign. voc. Ballivus. Magna Charta, c. 28.*

BALNEARIUM. Lat. [from *balneum*, a bath.] In the Roman law. Thieves, who stole the clothes of bathers in the public baths. *Dig. 47. 17. 4 Bl. Com. 239.*

BAN. Sax. Eng. and Fr. [L. Lat. *banum*, *bannus*, from Sax. *pan* or *fan*, a thing spread out, (*extensum*, *expansum*.) *Spelman.*] In old European law. A military standard, (*vezillum*;) a thing unfurled, a banner, (L. Lat. *banneriurn*, *bandum*.) *Spelman.*

A summoning to a standard; a calling out of a military force. *Id.* The force itself so summoned; a national army levied by proclamation. See *Arrierban*, *Heribannum*, *Band*.

A public proclamation or notice of any kind. (Ital. and Span. *bando*.) See *Banns*.

A proclamation, edict or sentence of interdiction or proscription. A declaration of outlawry; a sentence of excommunication; a denunciation or curse. *Cowell. Blount. Tomlins.*

An expanse; an extent of space or territory; a space enclosed within certain limits; the limits or bounds themselves. *Spelman.*

A privileged space or territory around a town, (Fr. *banlieu*;) monastery or other place.

In feudal law. A space within which certain privileges might be exclusively exercised, and certain dues exacted. Mills and ovens had their *bans* (*banna*;) within which the lords might exact what, in England, was called suit at mill, (*secta ad molendinum*;) and suit at oven, (*secta ad furnum*;) These were called, in old French law, *banal* mills and ovens. *Guyot, Inst.*

Feod. ch. 3. Id. ch. 20. This term has been retained in Canadian law. See *Dunkin's Address*, (1853,) pp. 89—91.

BANAL, *Bannal*. Fr. [from *ban*, a privileged space or district.] In old French and Canadian law. Having qualities derived from a *ban* or privileged space; privileged. A *banal* mill is one to which the seignior or lord may require his tenant to carry his grain to be ground. *Dunkin's Address*, 89.

BANALITY. [Fr. *bannalité*, from *banal* or *ban*, qq. v.] In old French and Canadian law. A seigniorial right to exact certain dues or services within certain limits. The right of compelling a tenant to perform certain acts or render certain services, for the exclusive benefit of the seignior, within certain privileged limits; as to send his grain to the lord's mill to be ground, &c. The right of having a mill, &c. at which such an exclusive service may be exacted. *Guyot, Inst. Feod. ch. 20. Dunkin's Address*, 89—91.

The territorial limits within which such right may be exercised. *Id. ibid.*

BANC. [L. Lat. *bancus*; L. Fr. *banke*, *bancke*, *banque*.] Bench; the place where a court permanently or regularly sits. This word is probably an abbreviation of *bancus*, and is still used, as in the phrase *in banc*, (q. v.) though it is written also *bank*. See *Bancus*, *Bank*, *Bench*.

BANCHE. L. Fr. Bench; a name formerly given to both the English courts now termed the Queen's Bench, and the Common Pleas. *De lun bancke et de lautre*; of the one bench and of the other. *Britt. c. 21.* See *Bank*.

BANCUS. L. Lat. In old English law and practice. A bench or seat in the king's hall or palace. *Fleta, lib. 2, c. 16, § 1.*

A high seat, or seat of distinction; a seat of judgment, or tribunal for the administration of justice. See *Bench*.

The original name of the English Court of Common Pleas; afterwards distinguished as *Bancus apud Westmonasterium*, the Bench at Westminster, and *Communis Bancus*, the Common Bench. See *infra. Justitiiarii de Banco*; justices of the Bench. *Bract. fol. 149, 353 b. Fleta, lib. 2, c. 34. Justitiiarii residentes in banco*; justices sitting in the bench. *Bract. ub. sup. Id. fol. 105 b, 108. Coram justitiiariis in banco residentibus. Glanv. lib. 11, c. 1. Id. lib. 2, c. 6. Dies in banco*; a day in the

bench. *Bract.* fol. 353 b, 360, 361. See *Dies in banco*. *Ad bancum*; at, or to the bench. *Id.* fol. 351, 353 b, 360 b.

The seat or sittings of a court with its full judicial authority, or in full form, as distinguished from sittings at *Nisi Prius*. *Dies in banco*; a day in bench or banc. See *Bench*, *Nisi Prius*.

A stall, bench, table or counter, on which goods were exposed for sale. *Domesday*, cited in *Cowell*.

A seat, or place of residence. See *Francus bancus*.

* * *Bancus* appears as the distinctive name of the court afterwards known as the *Common Bench*, (and, in modern times, as the *Common Pleas*.) soon after the Conquest, the appellation being probably derived from the stationary character of the court, which was permanently held at Westminster. *Maddox Hist. Excheq.* 539. 1 *Reeves' Hist. Eng. Law*, 57—59. But see *Ycarb. M.* 7 Edw. III. 47. H. 8 Edw. III. 47. The *Bancus* is named as a distinct court in the *Magna Charta* of 9 Hen. III. cc. 12, 13, and in the *Charter of Hen. III.* A. D. 1217. But the word is not used in the *Charter of King John*, nor in the *Articles of King John's Charter*. The court is constantly mentioned under this name by *Bracton*, as will appear from the references given in the definition (*supra*), being a very few of the passages in which the word occurs. The same author describes very clearly its organization and jurisdiction, distinguishing it from the king's own court, (or *aula regia*), properly so called. *Habet enim plures curias*, &c.; the king has several courts in which divers actions are determined, and of these courts he has one of his own, (*habet unam propriam*), to wit, the *aula regia*, and chief [or supreme] justices who determine the king's own causes, and those of all other persons by plaint or by privilege, &c. He has also a court, and justices sitting in bench, (*habet etiam curiam, et justitios in banco residentes*), who have cognizance or jurisdiction of all pleas, which they are authorized to take cognizance of, and without warrant they have no jurisdiction or power. *Bract.* fol. 105 b. So again, he describes the justices of the latter court as *certo loco residentes, sicut in banco*, (sitting in a certain place, as in the bench.) *Id.* fol. 108. See *Fleta*, lib. 2, c. 2, § 7. Hence the justices of this court were always described as *justitiiarii de Banco*, justices of

the Bench, or more fully, as *justitiiarii regis de Banco apud Westmonasterium*, the king's justices of the Bench at Westminster, which is the proper technical title of the justices of the *Common Pleas* at the present day. *Bract.* fol. 149, 353 b. *Fleta*, lib. 2, c. 34. *Reg. Orig.* 19, et passim. *Gilb. Hist. C. Pleas*, 1. *Townes. Pl.* 211. After the dissolution of the *aula regia*, the court which took its place as the highest tribunal in the kingdom, assumed also the name of *Bancus*, being further designated as *Bancus Regis*, (q. v.) the King's Bench, to distinguish it from the original *Bancus*, which was now frequently called *Communus Bancus*, (q. v.) the Common Bench; the two courts being spoken of as *the Benches*, (*banci*.) *Stat. Westm.* 2, c. 30. From this time the judges of these courts are described as *justitiiarii de utroque Banco*, (*Fleta*, lib. 2, c. 35, § 4.) or *utriusque Banci*, justices of either Bench; and, in the Register, certain writs are said to be returnable *coram justitiiariis domini regis de uno banco vel altero*; before the king's justices of one or the other Bench. *Reg. Orig.* 199. *Les justices del both benches. Mem. in Scacc.* 19 Edw. I. *Les justices de l'un banke et l'autre. Dyer*, 57 b, (Fr. ed.) So the clerks were said to be of the one Bench and of the other, (*clers de l'un banke et de l'autre*.) *Britt.* c. 21. In modern times, the *Common Bench* has dropped the word by which it was at first exclusively designated, and is now generally known as the Court of *Common Pleas*; although the title "*Common Bench*" is still retained in the reports. 1 *Reeves' Hist. Eng. Law*, 245. See *Common Pleas Bench*.

BANCUS APUD WESTMONASTERIUM. L. Lat. The Bench at Westminster. *Fleta*, lib. 2, c. 2, § 7. *Id.* lib. 4, c. 5, § 10. *Bract.* fol. 353 b. *Mem. in Scacc.* H. 20 Edw. I. An ancient title of the English Court of *Common Pleas*. See *Bancus*.

BANCUS REGIS. L. Lat. The King's Bench, as supposed to be always held *coram ipso rege*, before the king himself. *In banco regis*; in the King's Bench. *Fleta*, lib. 2, c. 51, § 21. See *Bancus*, *King's Bench*.

BANCUS REGINÆ. L. Lat. The Queen's Bench. See *Queen's Bench*.

BANCI NARRATORES. L. Lat. In old English practice. Counters of the Bench, sometimes called serjeant counters; advocates or pleaders. *Placitatum ad-*

vocatorum, (*quos banci narratores vulgariter appellamus*); of the pleading advocates, whom we commonly call counters of the bench. *Matt. Per. Hist.* 1077, cited 1 *Bl. Com.* 24, note (t). *Steph. Pl. Appendix*, note (8). A class of advocates peculiar to the Bench, (*bancus*), as the English Court of Common Pleas was anciently called; answering to serjeants at law, who, until very recently, enjoyed a monopoly of the practice of that court. See *Bancus*, *Coun- tor*, *Serjeant*.

BAND. Sc. [see *Ban*.] In old Scotch law. A proclamation calling out a military force. "Dilatit of the contravention of the General Band, and of the Actes of Parliament in nocht presenting of thair menne before the Justice or his deputea." 1 *Pitcairn's Crim. Trials*, part 1, p. 205.

BANDE. Fr. [from Ital. *bando*, a public cry, publication made by drum or trumpet. *Emerig.*] In French law. A proclamation or edict. *Emerig. Tr. des Ass.* ch. 12, sect. 51. Hence *contrebande*, *contraband*. *Id.*

BANE. In old English law. A public denunciation of a malefactor; the same with what was called *hutesium*, hue and cry. *Spelman*. See *Hutesium*. *Bract.* fol. 116.

According to Cowell, who cites the same passage from Bracton, it signified the destruction or overthrow of any thing, as he who was the cause of another's death was said to be *le bane*; a malefactor. A *felo de se* was called by the Saxons *self bana*. *Blount*.

BANERETTUS, *Miles Banerettus*, *Banerettus*. L. Lat. In old English law. A banneret or knight banneret. *Spelman*. See *Banneret*.

BANK, *Banke*, *Bancke*, *Banque*, *Banky*, *Bauuc*. L. Fr. In old English law. Bench; the Bench. The name formerly given in French to the two superior common law courts in England. *Bank*, (*banke*, or *banque*) *le Roy*; the King's Bench. *Stat. Westm.* 1, c. 45. *Le Commune Bank*; the Common Bench. *Reg. Orig.* 108 b, *nota*. The latter court was also called *Bank a Westmynstre*; the Bench at Westminster. *Britt.* c. 90. *Stat. Westm.* 1, c. 45. *Justices du Banke*; justices of the Bench (that is, the Common Bench.) *Stat. Glouc.* c. 12. 1 *And.* 31. *Les justices de son Banke*; the justices of his Bench, (that is, the King's Bench.) *Artic. sup Chart.* c. 5. *En ce Bank*; in this Bench. *Yearb. M.* 3 Hen. VI. 2. The name was origi-

nally peculiar to the Common Bench. See *Bancus*.

This word, judging from the corrupted form *banky*, seems to have been sometimes pronounced in two syllables.

BANK, *Banc*. [L. Lat. *bancus*.] In practice. The regular term of a court of law, as distinguished from a sittings at *nisi prius*. The ancient phrase *in banco*, sometimes translated *in bank* or *banc*, once exclusively used to denote the sittings of the English Court of Common Bench, is now constantly applied to any superior court of law, to denote the full court sitting at its regular law terms for the hearing of arguments, and is thus distinguished from a sittings at *nisi prius*, or a circuit court held by one of the judges for the trial of causes before a jury. Days in bank (*dies in banco*), are certain days in term appointed by the court or by statute, for the return of process, and the appearance of parties. See *Days in bank*. The day in bank was always distinguished from the day at *nisi prius*, or in the country, (*in patria*) as it was termed; that is, the day of trial. *Ita quod certus dies detur in banco, et certi dies et locus dentur in patria*; so that a certain day be given in bank, and a certain day and place be given in the country. *Reg. Orig.* 186.

BANK. [from Lat. *bancus*, a bench or counter used by dealers in money.] A place for the deposit of money. A company or association of persons, authorized to receive deposits of money, to lend money, and to issue promissory notes intended for circulation as money.

The house or place where such business is carried on.

BANK. [Lat. *ripa*.] Land, usually of some elevation, along the side of a river or stream, confining the water in its channel or bed. See 13 *Howard's R.* 417, Wayne, J. That space of rising ground above low-water mark, which is usually covered by high water. 17 *Alabama R.* 780. Defined in the Digests, as that which contains or encloses a stream at its fullest height, (*quæ plenissimum flumen continet*.) *Dig.* 43. 12. 3. 1. The banks of a river are those elevations of land which confine the waters when they rise out of the bed. *Cartis*, J. 13 *Howard's R.* 426. As to the banks of rivers, as boundaries of land, see *Angell on Water-Courses*, § 24, et seq. 3 *Kernan's R.* 296.

BANK-BILL. A bill issued by a bank,

for the payment of money on demand, and intended to circulate as money. The more strictly accurate designation of such paper is *bank-note*; although it has been decided that "bank-bill" and "bank-note" mean the same thing. 4 *Gray's R.* 416. See *Bank-note*.

BANK-NOTE. A promissory note issued by a bank, payable to the bearer on demand, and intended for circulation as money. Popularly termed a "bank-bill." Bank-notes, strictly speaking, are not money; but in conformity with common usage and by general consent, they are received and treated as money. 1 *Burr.* 457. 13 *East*, 20. 12 *Johns. R.* 220. 5 *Mason's R.* 537. "Good bank-notes" or "current bank-notes" are held to import such only as are redeemable in gold or silver, or such as are equivalent thereto. 1 *Texas R.* 246.

BANKER. One who keeps a bank; one who is engaged in the business of *banking*, (q. v.)

BANKEROUT. O. Eng. Bankrupt; insolvent; indebted beyond the means of payment. This word occurs in the old colony laws of New Plymouth, A. D. 1633, in the sense of *insolvent*, as appears from the following extracts:—"That in case it fall out that any die more indebted than their estate of goods and chattels amount unto," &c. "That in case a man die *bankerout*, as afore," &c. *Plymouth Col. Laws*, (ed. 1836,) p. 33. See *Bankrupt*.

BANKING. The business of receiving money on deposit, loaning money, discounting notes, issuing notes for circulation, collecting money on notes deposited, negotiating bills, &c. See *Cleveland on the Banking System of the State of New-York*, 1857.

BANKRUPT. [O. Eng. and Fr. *banker-out*; from L. Fr. *banke*, Lat. *bancus*, a bench, table or counter; and *roupt* or *rout*, Lat. *ruptus*, broken.] Literally, one whose bench or counter, (place of business,) is broken or broken up.

In English law. A trader who secludes himself, or does certain other acts tending to defraud his creditors. 2 *Bl. Com.* 285, 471. See *Bankruptcy, Act of Bankruptcy, Trader*. A person becomes a bankrupt by the mere commission of certain acts defined by law, without reference to any legal proceedings that may be taken afterwards. See 8 *Taunt.* 791, Dallas, C. J.

* * The term *bankrupt* had its origin in the incidents of trade and commerce,

and has come down to us in that connection, and through the medium of the law. *Bronson, J. 5 Hill's (N. Y.) Rep.* 343. Its origin indeed is sufficiently indicated by its etymology,—the French or Norman *banke* and *banque*, and the Latin *bancus* having been used from a very early period to signify a *bench*, table or counter, on which goods were exposed for sale, or money for exchange, thus denoting the occupation of a *trader*, a *dealer* in wares or merchandise, a *merchant*, a money-changer, or banker in the strict sense of the word. See *Bancus*. In the Roman law, the word *mensa* (a table) was used in a similar manner, to denote the business of an *argentarius*, or dealer in money. *Dig.* 2. 13. 4. *Nov.* 136, c. 1. The word *bankrupt* occurs for the first time in the title of the statute 34 and 35 Hen. VIII. c. 4, ("against such persons as do make *bank rupt*,"—a literal translation of the French idiom *qui font banque route*) which is the first of the English bankrupt laws. 2 *Bl. Com.* 472, note (c.) The persons against whom this statute was directed are more particularly described as those "who obtain other men's goods on credit, and then suddenly flee to parts unknown, or keep house, and there consume their substance without paying their debts." 2 *Steph. Com.* 190. *Cowell*. Subsequent statutes have more clearly defined their objects in this particular, and under their operation, and by long and settled usage the term *bankrupt* has, in English law, acquired a specific and determinate meaning, being applied exclusively to *merchants* and *traders*, or those who get their livelihood by *buying and selling* for gain. 2 *Steph. Com.* 193—195. 2 *Kent's Com.* 389. See *Trader*. It is, however, not merely confined to *traders* in the legal sense of the word, but is still further narrowed, by being restricted to those traders *who do certain acts* defined by law, tending to the injury of their creditors; such, and such only, being the proper objects of the bankrupt laws. In this view, a bankrupt still retains the character of an *offender* which originally belonged to the term, though in a greatly modified sense, being no longer regarded as an actual criminal. He becomes a bankrupt, as any person becomes an offender, by committing an *act* defined by law, and by such commission makes himself liable, as an offender, to be proceeded against in the way of punishment. Hence the distinction between *bankrupt* and *insolvent*, which has

always been so carefully maintained in English law. 2 *Bl. Com.* 484. See *Insolvent*. "A man," said Lord Mansfield, in *Hassells v. Simpson*, "may be insolvent, without being a bankrupt; and a man may become a bankrupt and yet be able to pay 25s. in the pound." 1 *Dougl.* 91, note. 2 *W. Bl.* 997, note.

BANKRUPT. In American law. The meaning of this term remains perhaps to be settled, although the tendency hitherto has been to give it the looser sense of *insolvent*, or, in other words, to use the terms *bankrupt* and *insolvent* indifferently, as expressive of the same description of persons. See *Insolvent*.

At the time of the passage of the first bankrupt law of the United States, (Act of Congress, April 4, 1800, repealed by act of December 19, 1803,) the terms *bankrupt* and *bankruptcy* seem to have been understood in nearly or quite the technical sense they bore in the English statutes. Afterwards, however, the distinction between *bankrupt* and *insolvent* became gradually obscured, the courts finding it difficult to discriminate with accuracy between bankrupt and insolvent laws. Marshall, C. J. 4 *Wheaton's R.* 122. 2 *Kent's Com.* 390. See 2 *Story on the Const.* §§ 1111—1115. This distinction was finally and effectually broken down by the late act of Congress, August 19, 1841, which expressly united the provisions of both descriptions of laws, and included (§ 1,) under the denomination of *bankrupts*, not only "merchants, retailers, bankers, factors, brokers, underwriters and marine insurers," who should commit certain acts of bankruptcy specified; but also, and indeed primarily, "all persons whatsoever, residing in any state, district or territory of the United States, owing debts which should not have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity," and which they were unable to pay. A very able opposition was made to this extension of the meaning of the term *bankrupt*, in several judicial opinions delivered soon after the passage of the act, to which its early and total repeal (in 1843) has given additional weight and value. Opinion of Bronson, J. (dissenting), 5 *Hill's* (N. Y.) *Rep.* 329—371. Opinion of Wells, J. U. S. District Court, Missouri, 2 *N. Y. Legal Observer*, 185. See 4 *Comstock's R.* 283.

Bouvier, in his Law Dictionary, has restored, in some degree, the old distinction between bankrupt and insolvent; defining the former to be "a person who has done, or suffered *some act* to be done, which is by law declared an *act of bankruptcy*." The word *trader*, it will be seen, is here omitted, while, on the other hand, it is prominently employed by Webster, in giving even the *less technical sense of bankrupt*:—"A trader who fails, or becomes unable to pay his just debts; an insolvent trader. In strictness, no person but a trader can be a bankrupt." So, a bankrupt is called by Mr. Justice Story, "a broken up and ruined trader." 3 *Story's R.* 453. These definitions, taken together, bring us very nearly to that of the English law. See *supra*.

BANKRUPT LAW. A law for the benefit of the creditors of a *bankrupt*, (q. v.) and for the relief of the bankrupt himself.* A law which, upon a *bankrupt's* surrendering all his property to commissioners for the benefit of his creditors, discharges him from the payment of his debts, and all liability to arrest or suit for the same, and secures his future acquired property from a liability to the payment of his past debts. Webster. Mr. Justice Story describes a bankrupt law as "a law for the benefit and relief of creditors, and their debtors, in cases in which the latter are unable or unwilling to pay their debts." 2 *Story on Const.* § 1113, note 2, (ed. 1858.) Mr. Stephen speaks of it as a system of law of a peculiar and anomalous character, intended to afford to the creditors of persons engaged in trade a greater security for the collection of their debts than they enjoyed at common law, under the ordinary remedy by action. 2 *Steph. Com.* 189, 190. The present bankrupt law of England is contained in the "Bankrupt Law Consolidation Act," 12 & 13 Vict. c. 106, embracing the provisions of the statutes 6 Geo. IV. c. 16, 1 & 2 Will. IV. c. 56, 2 & 3 Will. IV. c. 114, 3 & 4 Will. IV. c. 47, and 5 & 6 Vict. c. 122, with amendments. *Archbold's Law and Pr. of Bankruptcy*, (11th ed.) b. 2, pp. 235—337.

The leading features of a bankrupt law, or a system established by such a law, as distinguished from the ordinary law between debtor and creditor, are (1) the summary and immediate seizure of all the debtor's property; (2) the distribution of it among the creditors in general; and (3) the discharge of the debtor from future liability for the debts then existing. *Id.* 191. 2 *Burr.* 829.

The leading distinction between a *bankrupt* law and an *insolvent* law, in the proper technical sense of the words, consists in the character of the persons upon whom it is designed to operate; the former contemplating as its objects *bankrupts* only, that is, *traders* of a certain description; the latter, *insolvents* in general, or persons unable to pay their debts. This has led to a marked separation between the two systems, in principle and in practice, which in England has always been carefully maintained, although in the United States it has of late been effectually disregarded. In further illustration of this distinction, it may be observed that a *bankrupt law*, in its proper sense, is a remedy intended primarily for the benefit of *creditors*; it is set in motion at their instance, and operates upon the debtor against his will, (*in invitum*,) although, in its result, it effectually discharges him from his debts. An *insolvent law*, on the other hand, is chiefly intended for the benefit of the *debtor*, and is set in motion at his instance, though less effective as a discharge in its final result. Bronson, *J. 5 Hill's R.* 331, 348. 1 *Dane's Abr.* 317.

BANKRUPTCY. The act of becoming a bankrupt; the state or condition of a bankrupt.* A *status*, or condition fixed by legislative provision. 2 *Bell's Com.* 214. A condition following upon the commission of certain acts defined by law.* 2 *Steph. Com.* 191, 192. Curtis, *J. 13 Howard's R.* 168. "A breaking up of the bank." Lord Ellenborough, 3 *Campb.* 312. See *Bankrupt*.

In a looser sense, (as used in American law)—inability to pay one's debts; insolvency. The stopping and breaking up of business, because a man is insolvent, and utterly incapable of carrying it on.* Story, *J. 2 Story's R.* 354, 359. Bankruptcy does not consist in the proceedings in court. It takes place in the course of a man's business, and the proceedings in court are to ascertain whether the party was or was not a bankrupt at the time the original petition was filed. Bankruptcy is well defined to be "the state of a man unable to pursue his business, and meet his engagements in consequence of the derangement of his affairs." Randall, *J. Crabbe's R.* 456, 465.

BANLEUCA, Banleuga, Baleuca. L. Lat. [Fr. *banlieue*; from *ban*, a territory, and *leuca*, a league.] In old law. A space around certain cities, towns, monasteries, &c., distinguished from other ground, and protected by peculiar privileges. *Spelman.*

In France, the word *banlieue* is used to signify a district around a city, usually, but not always a *league* on all sides, through which the proclamation of the principal judge of the place has authority. *Id. P. Cyclopædia*, voc. *Ban*. It is also used in Lower Canada.

BANNERET, Baneret. [L. Lat. *banerettus*, miles *banerettus*.] In old English law. A name of dignity now nearly, if not entirely, extinct, denoting a degree next after a baron, and before a knight. 1 *Bl. Com.* 403.

BANNI, Banny. L. Fr. A banished man; an outlaw. *Britt.* c. 12, 13.

BANNI NUPTIARUM. L. Lat. In old English law. The bans of matrimony. *Spelman.* *Cowell.* Bracton uses the singular *bannum*. *Bract.* fol. 307 b. *Fleta* uses *bannus*. *Fleta*, lib. 5, c. 30, § 3. See *Bannum, Bannus*.

BANNIMUS. L. Lat. [from *bannire*, q. v.] We ban or expel. The form of expulsion of a member from the University of Oxford; by affixing the sentence in some public places, as a promulgation of it. *Cowell.*

BANNIRE, Banniare. L. Lat. [from *bannum*, q. v.] In old European law. To proclaim; to decree or declare publicly; to publish an edict, decree or proclamation, (*bannum*.) *Bannivimus*, ut *unusquisque* *judea*, &c.; we have decreed that every judge, &c. *Decret. Childeb. ad L. Salic.* c. 8. *Spelman.*

To summon; to call out by edict, either to court or to military service; to summon to a standard, *bannum*, or banner. *Nullus ad placitum banniat nisi*, &c.; no person shall be summoned to court unless, &c. *Cepit. ad L. Salic.* par. 1, c. 17. *Spelman.* *Omnes leudes in exercitu gradiendum banniti sunt*; all liege men, or vassals, are summoned to go into the army. *Spelman.*

To proscribe; to put to the ban, (*in bannum mittere*); to confiscate. *Multos bannivit, occupans res eorum*; he proscribed many persons, seizing their property. *Albert. Argentin.* A. D. 1348. *Spelman.* *Rebus omnibus in bannum missis*; all things being put to the ban. *LL. Longob.* lib. 2, tit. 43, l. 4. *Spelman.*

To expel by a public proclamation or ban; to banish; or according to *Spelman*, to expel from a *bannum* or certain territory, (*ejicere e banno vel territorio*.) *Spelman*, voc. *Ban*. *Reg. Orig.* 312 b. See *Bannimus*.

BANNITIO. L. Lat. [from *bannire*, q. v.] In old European law. Banishment; expulsion by a ban, or public proclamation. *Reg. Orig.* 312 b. See *Bannum*.

A banning, or putting to the ban. See *Bannire*.

BANNITUS. *Bannitus.* L. Lat. [from *bannire*, q. v.] In old European law. Banished; outlawed. *Reg. Orig.* 312 b. *Feud. Lib.* 2, tit. 28. 1 *Pitt. Cr. Trials*, part 2. p. 103. Skene observes that *bannum* signifies a trumpet; and refers to the Scotch custom by which, when any person was banished or "put to the horn," the same was done with three blasts of a horn or trumpet. See *Horning*.

An outlaw. *Pat. 15 Edw. III. Cowell. Blount.*

BANNUM. L. Lat. [Sax. *ban.*] In old European law. An edict, statute or public ordinance; a ban. *Pontes qui per bannum fieri solebant*; the bridges which used to be established by ban. *LL. Longob.* lib. 3, tit. 1, l. 11. *Spelman.*

A fine or penalty. *Bannum solvat*; he shall pay a ban. *L. Sax.* tit. 2, § 9. *Spelman.*

A tribute. *Capitt. Carol.* lib. 3, c. 68. *Spelman. Esprit des Lois*, liv. 30, c. 20, note.

Banishment or exile; proscription; confiscation. See *Bannire*.

An anathema or curse. *Synod. Confl.* A. D. 860. *Spelman.*

A proclamation or publication; the publication of marriage in a church. *Cum bannum et tertia denuntiatio fiat ante desponsationem*; when the ban and third or threefold publication is made before espousals. *Bract.* fol. 307 b. See *Bannus*.

A field or territory; the limit or precinct of a town. *Spelman. Villam cum omnibus bannis et attinentiis*; the town with all its bans (or bounds) and appurtenances. *Albert. Argentina.* cited *ibid.*

The following passage shows the use of the word *bannum*, and other Latin derivatives from the same root. *Bannire mandamus et divulgari publice bannitos. Bannum etiam, et causam banni, pro qua bannitus aliquis fuerit, et diem bannitionis, &c., in actis volumus contineri. LL. Neapolit.* lib. 2, tit. 1. *Spelman.*

BANNUS. L. Lat. In old English law. A proclamation. *Bannus regis*; the king's proclamation, made by the voice of a herald, forbidding all present at the trial by combat, to interfere either by motion or word, whatever they might see or hear. *Bract.* fol. 142. *Fleta*, lib. 1, c. 34, § 1.

The bans of marriage. *Cum bannus et trina denuntiatio facta fuerit ante desponsationem. Fleta*, lib. 5, c. 30, § 3. See *Bannum*.

BANNS, Bans. [L. Lat. *banni, banna*, from Sax. *ban*, a public notice.] The public proclamation which the law of England and of Scotland requires of the intention of parties to enter into the marriage covenant. *Stat. 4 Geo. IV.* c. 76. 2 *Steph. Com.* 286, et seq. *Bract.* fol. 307 b. *Bell's Dict.* The proclamation must be made in church, on three successive Sundays, during the time of the celebration of public worship, when it is presumed that the whole parish is present. The bans, however, may be dispensed with, by special license. *P. Cyclopædia.* 2 *Steph. Com. ub. sup.* A similar publication is required by law in several of the United States.

BANQUE. L. Fr. A bench; the table or counter of a trader, merchant or banker. *Banque route*; a broken bench or counter; bankrupt; or in old English, *bankerout*. See *Bankrupt*.

BAR, Barr. [Fr. *barre*; L. Lat. *barra, exceptio peremptoria.*] In pleading. A special plea, constituting a sufficient answer to an action at law; and so called because it *barred*, i. e. prevented the plaintiff from further prosecuting it with effect, and, if established by proof, defeated and destroyed the action altogether. Now called a special *plea in bar*. See *Plea in bar*.

The use of the term *bar* is common in the old books. *Plowd.* 26, 28. *Co. Litt.* 303 b, 372 a. Pleas are divided into dilatories and *bars*. *Hob.* 245. Bars again are divided into various kinds. *Plowd. ub. sup. Hale's Anal.* sect. xlix. *Cowell. Boote's Suit at Law*, 108, note. A plea of this kind was still more anciently termed by Bracton, after the civilians, *exceptio peremptoria*, a peremptory exception. *Bract.* fol. 399 b. *Fleta*, lib. 6, c. 37. See *Exceptio*. The terms *barrer* and *barre* were in common use in the law language of France in the year 1270, which is about the same period when they first made their appearance in English pleading. *Ducange, voc. Barra. Steph. Pl. Appendix*, Note (25).

BAR. [L. Lat. *barra.*] In practice. The place in court which counsellors or advocates occupy while addressing the court or jury, and where prisoners are brought for the purpose of being arraigned or sentenced; usually designated by a material enclosure of some kind, to which the name of a *bar* may with more or less propriety

be given. Webster defines it to be "the railing which *encloses* the place which counsel occupy in courts of justice." According to this definition, all the counsel in court properly sit or plead *within the bar*. In the English courts, on the other hand, many of the counsel, including the great body of *barristers* (who hence derive their name,) sit *without* the bar, and are for this reason called *utter* or *outer barristers* (q. v.); the space *within* being a privileged place allotted to king's or queen's counsel, serjeants, and others having privilege or pre-audience. 3 *Bl. Com.* 28. 3 *Steph. Com.* 387. *Wharton's Lex. voc. Barrister*. The term *bar*, as expressive of a material enclosure, is used with much more distinctness in English than in American practice.

The presence of the court, either actual or constructive. A trial *at bar* (q. v.) is a trial had before the full court in term, in contradistinction to the ordinary trial *at nisi prius*, (q. v.) A case *at bar* is a case presently before the court; a case under argument.

The members of the legal profession, collectively, are figuratively called *the bar*, from the place which they usually occupy in court. This was as early as *Keilw.* 40. See *Barre*. The same figurative use of the term has led, in England, to the distinction between practitioners *at the bar*, including *barristers* in the proper sense, and practitioners *under the bar*, comprising special pleaders and conveyancers. *Warren's Law Studies*, 1, note, (Am. ed.) Attorneys are considered as being always present in court. 1 *Tidd's Pr.* 80.

BARAGARIA. Span. A concubine, whom a man keeps alone in his house, unconnected with any other woman. *Las Partidas*, part 4, tit. 14.

BARATERIUS. L. Lat. In old English law. A barretor, (q. v.) *Spelman*.

BARATOR, Barector. L. Lat. A barretor, (q. v.) *Spelman*.

BARATRY. [L. Lat. *baratria*.] In Scotch law. The crime committed by a judge who is induced by a bribe to pronounce a judgment. *Baratrium committit qui propter pecuniam justitiam baractat*; he commits baratry who barter justice for money. *Bell's Dict.*

BARATTERIE. Fr. In French law. Baratry. *Emerig. Tr. des Ass.* ch. 12, sect. 3, § 1.

BARBANUS. L. Lat. In old Lombardic law. An uncle, (*patruus*.) *LL. Longob.* lib. 1, tit. 10, l. 1. *Spelman*.

BARBITONSOR. Lat. In old English law. A barber. *Fleta*, lib. 1, c. 31, § 4.

BARBITS. L. Fr. Sheep. *Dyer*, 29, (Fr. ed.) *Litt.* sect. 71.

BARCA. Ital. and L. Lat. In old law. A bark or barque; a kind of merchant vessel. *Spelman*.

BARCARIA. L. Lat. In old English law. A barkary, or tan house; a place to keep bark for the use of tanners. *Cowell Towns.* Pl. 55.

BARCARIUM, Bercarium, Berquarium. L. Lat. [Fr. *bergerie*, from *berger*, a shepherd.] In old English law. A sheepcote or sheepwalk; a berghery. *Spelman. Cowell.* See *Bercaria*.

Barcarius, Barquarius, Berquarius. A shepherd; a keeper of sheep. *Spelman*.

BARECTATOR, Barector. L. Lat. In old English law. A barretor, or barrator. *Spelman.* See *Barretor*.

BARET. L. Fr. A wrangling suit. *Britt.* c. 92. *Co. Litt.* 368 b.

BARGA, Borgia. L. Lat. In old law. A barge. *Spelman. Towns.* Pl. 226.

BARGAIN AND SALE. In conveying. The transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. *Shep. Touch.* (by Preston), 221.

The instrument, conveyance or assurance by which such transfer is made. *Id. ibid.* —A kind of real contract, whereby the bargainor, for some pecuniary consideration, *bargains and sells*, that is, contracts to convey the land to the bargainee, and becomes by such a bargain a trustee for, or seised to the use of the bargainee; and then the statute of uses completes the purchase. 2 *Bl. Com.* 388.—A contract, in consideration of money, or other valuable consideration, passing an estate in lands and tenements, by deed indented and enrolled. *Bac. Abr.* Bargain and sale.

Bargain and sale is, in England, one of the ordinary modes of conveying estates, or, in the language of Sheppard, one of the "common assurances of the kingdom." *Shep. Touch.* 221. In the United States, it is the most prevalent mode of conveyance; and gives a seisin to the grantee without any entry or pernamy of the profits. *Parker, C. J.* 15 *Mass. R.* 214. 4 *Kent's Com.* 495, and notes. The appropriate and operative words of such a conveyance are "*bargain and sell*," "*bargained and sold*," (L. Lat. *barganizavit et vendidit*.) although these are not absolutely necessary to a good

bargain and sale, for words equivalent, such as "*alien*," or "*grant*," or "*demise* and *grant*," will suffice to make land pass. 2 *Inst.* 672. *Shep. Touch.* 222. 1 *Steph. Com.* 494.

* * A bargain and sale was originally a contract for the conveyance of land for a valuable consideration; and though the land itself would not pass without livery, the contract was sufficient to raise a *use*, which the bargainor was bound in equity to perform. 1 *Co.* 121 b. After the Statute of Uses was passed, the use which was raised and vested in the bargainee by means of the bargain, was annexed to the *possession*, and by that operation the bargain became at once a sale, and complete transfer of the title. 2 *Bl. Com.* 338. 4 *Kent's Com.* 496. See *Id.* 301, note. In other words, a bargain and sale was originally nothing more than the sale of a use, the possession or seisin of the land itself still remaining in the bargainor. Since the Statute of Uses, the bargain and sale vests the *use*, as it did before, and then the statute vests, transfers, or annexes the possession; thus completing the purchase. *Shep. Touch.* (by Preston), 221. 2 *Bl. Com.* 338. See 1 *Steph. Com.* 492—495. See *Use, Statute of Uses*.

BARGAIN AND SALE (of goods). An agreement to sell, followed and completed by an actual sale.* *Com. Dig.* Bargain and Sale, (A.)—This term is frequently applied to the transfer of property in goods; the word *bargain* denoting the arrangement of the terms upon which the one party sells, and the other buys; and the word *sale* expressing the completion of the contract, so as to pass the property from the seller to the buyer.* *Shep. Touch.* 221. *P. Cyclopædia.* In such cases, the seller is called the *bargainor*, and the buyer the *bargainee*, and the two parts of the transaction taken together, [including the offer and acceptance of a consideration,] constitute the whole contract of buying and selling personal goods, so as effectually to change the property. *Id. ibid.*

A bargain and sale of chattels personal is sometimes termed an *assignment*, (q. v.) and may, in general, be made by parol, that is, either by mere writing, or by mere word of mouth, and does not require the solemnity of a *deed*. But instruments in writing are frequent, and in some cases essential, and are either in the form of a mere note or memorandum, or of a regular assignment,

which last is ordinarily denominated a *bill of sale*. 2 *Steph. Com.* 104.

BARGANIZARE. L. Lat. In old conveyancing. To bargain; to agree. *Towns. Pl.* 55. *Barganizavit et vendidit*; (he) hath bargained and sold. *Barganizasset*; (he) had bargained. *Reg. Orig.* 108. *Dedi, concessi, barganizavi et feoffavi*; I have given, granted, bargained and enfeoffed. 1 *Leon.* 58.

BARGEMEN are liable as common carriers. *Angell on Carriers*, § 79.

BARGUS. L. Lat. In old European law. The branch or trunk of a tree; (*ramus, truncus*.) *L. Salic.* tit. 69, § 1. *Spelman.*

BARICELLUS. L. Lat. In old European law. An officer who apprehended malefactors, (*circitor, lictor*.) *Const. Mediolanens.* Car. V. *Spelman* makes it equivalent to the Fr. and Eng. *sergeant*.

BARILLATUM. L. Lat. In old English law. A vessel for containing liquids. *Militi quotidie liberetur à celar' regis, barillatum vini, continens ad minus unum jalonem*; there shall be delivered to the knight, every day, by the king's cellarer (steward) a barrel (?) of wine, containing at least one gallon. *Fleta*, lib. 2, c. 5, § 6. See *Barillus*.

BARILLUS, Barillum. L. Lat. In old English law. A barrel. *Cartular. Hen. de Oilli*, temp. Hen. II. *Cowell.*

BARK, [Lat. *cortex*,] is sometimes figuratively used to denote the mere words or letter of an instrument, or outer covering of the ideas sought to be expressed, as distinguished from its inner substance or essential meaning. "If the *bark* makes for them, the pith makes for us." *Lord Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 333. See *Cortex, Qui hæret in litera*, &c.

BARO, Barus, Viro. L. Lat. [Lat. *vir*; Sax. *wer, war, var*; O. Fr. *ber*; Alam. *bar*; Græco-barb. *βάρος*.] In old European law. A man. *Si quis baroni viam suam obstaverit*; if any one shall stop a man's way. *L. Salic.* tit. 33, § 1. *Spelman.* *Si barus fuerit qui fæminam percusserit*; if it be a man who has struck a woman. *L. Alam.* tit. 95.

A freeman, or freedman, (*homo liber et libertinus*.) *Si ancilla fuerit, solvat solidum unum*; si barus fuerit, similiter; si servus fuerit, medium solidum; if it be a maid servant, he shall pay one shilling; if a freeman, the same; if a slave, half a shilling. *L. Alam.* tit. 95. *Spelman.*

A strong, able-bodied man, (*vir fortis in laboribus*), who serves for hire, (*mercenarius*). *Gloss. Arabico-Lat. Isidor. Orig.* lib. 9, c. 4. *Spelman*.

A warrior or chief, as distinguished by strength; a baron. *Sunt et alii potentes sub rege, qui dicuntur barones, id est, robur belli*; there are also other powerful men under the king who are called *barones* (barons), that is, the strength of war. *Bract. fol. 5 b.*

A life, or body guardsman, (*satelles*; *βασιλ, βασιλῆος, barangus, varangus.*) *Spelman*.

A vassal or feudal tenant; a freeholder; (*liber tenens*); a proprietary owner of land, (*dominus proprietarius rei immobilis.*) *LL. Malcolm. II. Reg. Scot. c. 1, § 3. Spelman.*

A head or chief vassal (*vassallus capitalis*), or tenant in *capite*; one who held his lands immediately of the king, by military service. *LL. Mak. ub. sup.*

A feudal lord. *Mag. Chart. 9 Hen. III. c. 31. Id. Johan. c. 43. Majores barones*; greater barons. *Id. c. 14.*

A baron, lord or nobleman. *Bract. fol. 351 b. Spelman.*

A baron, or judge of the exchequer. *Bract. fol. 116 b. Fleta, lib. 2, c. 27. Spelman.*

A freeman. *Tanquam baro vel alius liber homo. Fleta, lib. 2, c. 2, § 12.*

A citizen of a city or town, having certain privileges; a chief citizen. *Fleta, lib. 2, c. 2, § 13. Id. c. 55, § 1. Barones de quinque portibus*; barons of the Cinque Ports. *Mag. Cart. 9 Hen. III. c. 9. Fleta, lib. 2, c. 55, § 1.*

A husband, (*Fr. baron*). *Spelman. See Baron.*

BARON. L. Fr. and Eng. [*L. Lat. baro, L. Fr. baroun, qq. v.*] A lord or nobleman; the most general title of nobility in England. 1 *Bl. Com. 398, 399. Finch's Law, b. 2, ch. 2.*

A particular degree or title of nobility, next to a viscount. 1 *Bl. Com. 398, 399, 405.*

A judge of the court of exchequer. 3 *Bl. Com. 44. Coeill. See Barons of the Exchequer.*

A husband. 1 *Bl. Com. 432, 442. See Baron and Feme.*

A freeman. *Co. Litt. 58 a. See Baro.* The chief citizens of London, York, and of some other places in which the citizens possess peculiar franchises, are called in early charters, *barons*; and the same name

was given to the freemen of the Cinque Ports. *Spelman. Bract. fol. 117 b. P. Cyclopædia.*

* * * The word *baron* is of Norman origin, and is supposed by *Spelman* to have been introduced into England about the time of the Conquest. *Baro*, its Latin form, occurs indeed in the laws of Edward the Confessor and other ancient collections, but *Spelman* supposes it to have been introduced in these cases by a later hand. As to its etymology, some have traced it to the *baro, varo, varro* and *vero* of the ancient Latin writers, others to the *βασιλ* of the Greeks. *Spelman*, however, has shown satisfactory reasons for deriving it from the language of the barbarian nations who overran the Roman empire. Its radical and primitive meaning seems to have been the same with that of the Latin *vir*, a man, and runs through the *wer, war, and var* of the Anglo-Saxons, the *ber* of the Franks, the *bar* of the Alamanni, (in their laws and charters *barus* and *paro*;) and the *baro* of the Lombards and Salians; thus denoting a common origin of the word at this period. *Spelman*. Hence the lower Greek *βασιλ, βασιλῆος, βασιλῆος*. This primitive meaning of *man* became gradually modified into that of *freeman, strong* or *able-bodied man*, (*see Baro*;) until the word came to be appropriated by the feudal law, to signify one who held lands of a superior by military and other services; a *vassal*, or feudal tenant; (*see Baro*;) one who acknowledged himself to be his lord's *man*, (*homo*, *see Homage*;) and whose *bodily ability* to bear arms was of course an essential qualification. It was after it had acquired this feudal sense of *tenant*, that it was introduced into the English law, the earliest use of the term being to denote that class of persons who held lands of a superior by military and other honorable services, and who were bound to attendance in the courts of that superior, to do homage, and to assist in the various business transacted there. *P. Cyclopædia*. The court itself in which these tenants had to perform their services, is called to this day the *court baron*; more correctly, (as some suppose) the court of the barons, (*curia baronum*.) 3 *Bl. Com. 33*. The term *baron*, however, soon came to be almost exclusively applied to those who held lands immediately of the king, the tenants in *capite*, or tenants in chief of the crown; and continued to be used in this sense for two centuries and a half after the

conquest. For the origin and application of the term as a title of nobility in England, see *Spelman*, *Selden's Titles of Honor*, *Horne's British Antiquities*, *P. Cyclopædia*.

BARON AND FEME. L. Fr. Husband and wife. A phrase of constant occurrence in the older law books, and not yet obsolete. *Baron*, in this connection, is supposed by Blackstone and other writers, to have the sense of *lord*, implying superiority and protection. 1 *Bl. Com.* 442. *Co. Litt.* 112 a. But, according to *Spelman*, it is to be taken in its simple primitive sense of *man*. See *Baro*. *Baron and feme* therefore strictly means nothing more than *man and woman*, or *man and wife*; (Gr. *ἀνὴρ καὶ γυνή*; Lat. *vir et mulier*;) *mulier* being always used in the old law in the sense of wife, (*uxor*.) *Spelman*, voc. *Baro*. Of these terms, *feme*, *fem*, or *femme*, is still separately and frequently used to signify a woman, or wife, See *Feme*, *Feme covert*, *Mulier*. "A *feme* took *baron*;" that is, a woman took husband. *Cro. Eliz.* 825.

BARONAGE. [L. Lat. *baronagium*.] In English law. The collective body of the barons, or of the nobility at large. *Spelman*, voc. *Baronagium*. *P. Cyclopædia*.

BARONAGIUM, Barnagium. L. Lat. In English law. The whole body of the barons (*integra classis baronum*;) the *baronage* of the king's court answering to the *homage* in the court of the manor or inferior lord. *Spelman*, voc. *Baro*.

The retinue, attendants or following (*Lat. clientela seu comitatus*, Fr. *le train*) of a baron. *Id.*

BARONATUS. See *Baronia*.

BARONET. [L. Lat. *baronetus*, q. v.] An English name of dignity, which in its etymology imports a *little baron*. It is an hereditary dignity created by letters patent, and usually descendible to the issue male, but is not a title of nobility. 1 *Bl. Com.* 403. It was instituted by King James I. A. D. 1611, in order to raise a competent sum for the reduction of the province of Ulster in Ireland. *Id. ibid.* The title, however, occurs in records and statutes at a much earlier period. *Spelman*, voc. *Baronetus*.

BARONETTUS, Baroncellus, Baronulus, Baronculus, Bariculus, Baroniculus. L. Lat. [dimin. of *baro*, q. v.] In old English law. A baronet; a little or lesser baron. The term occurs in authors of the time of Edward II. See *Spelman*, by whom it is explained at length.

BARONIA, Baronatus. L. Lat. [from *baro*, q. v.] In old English law. A barony. The dignity, territory, patrimony or fee of a baron. *Spelman*, voc. *Baro*. *Mag. Cart.* 9 Hen. III. c. 31. *Co. Litt.* 83 b.

A manor, or the territory of a manor. *Spelman*, *ub. sup.*

A house of a certain kind in London. *Id.*

A part of a county corresponding with a hundred. *Id.*

Caput baroniae; the head of a barony; the castle or chief house of the baron. *Id.* See *Barony*.

BARONISSA. L. Lat. In old English law. A baroness, the wife of a baron. *Bract.* fol. 351 b. *Fleta*, lib. 6, c. 10, § 15.

BARONS OF THE CINQUE PORTS. [Lat. *barones quinque portuum*.] Members returned to parliament from the Cinque Ports of England. See *Cinque Ports*. *Spelman* applies the term *barons* to the inhabitants of those ports generally.

BARONS OF THE EXCHEQUER. [L. Lat. *barones scaccarii*, or *de scaccario*.] The six judges of the Court of Exchequer in England, of whom one is styled the chief baron; answering to the justices and chief justice of other courts. *Holthouse*. *P. Cyclopædia*.

* * The Court of Exchequer was instituted immediately after the conquest, and it is probable that the judges were so denominated from the beginning. They are called *barons* in the earliest exchequer record, namely, the Pipe Roll of 31 Henry I. In accounting for this term, Mr. Reeves observes that the administration of justice in those days was so commonly attendant on the rank and character of a baron, that *baro* and *justitiarius* were often used synonymously. 1 *Reeves' Hist. Eng. Law*, 51. See 1 *Rob. Charles V.* Appendix, note xxiii. *Spelman* thinks it may have been derived from the Norman custom of giving the title of *baron* to judges and magistrates generally. And see the explanation in *Fleta*, lib. 2, cc. 26, 27. *Barones*, however, it is thought may mean nothing more than the *men*, that is, the chief men of the exchequer. *P. Cyclopædia*. See *Baro*.

BARONY. [L. Lat. *baronia*, *baronatus*.] In English law. The dignity of a baron. *Spelman*, voc. *Baronia*.

A species of tenure. To hold *by barony* anciently meant to hold lands by the service of attending the king in his courts, as barons; or, according to *Spelman*, to be a baron of the realm, (*esse baro regni*.) *Id.* *P. Cyclopædia*.

The territory of a baron, or the lands which form his tenancy. *Spelman. Bell's Dict.* A barony sometimes consisted of several manors, the chief of which was called *caput baroniae*. *Crabb's Hist. Eng. Law*, 72. See *Baronia, Caput baroniae*.

BAROUN, *Barroun, Barun*. L. Fr. Baron. *Conf. Cartar.* 25 Edw. I.

Husband. *Yearb. H. 1* Edw. II. 4. T. 4 Edw. II. 107.

BARRA. L. Lat. [L. Fr. *barre*.] In old pleading and practice. A bar to an action; a plea containing a sufficient answer to the action; a plea in bar. *Dyer*, 56, (Fr. ed.) See *Bar*.

The bar of a court. *Apprenticius ad barras*; an apprentice at the bars; a barrister. *Co. Litt.* 372 a. See *Apprenticius ad legem*. *Ad barram vocatus*; called to the bar. 1 *Ld. Raym.* 595. See *Barrister*.

BARRASTERIUS. L. Lat. In old records. A barrister; a pleader at the bar, (*repagularius causidicus*.) *Blount*.

BARRATARE. L. Lat. In old English law. To embezzle. *Clerke's Prax. Cur. Adm.* tit. 39.

BARRATOR. See *Barretor*.

BARRATROUS. Fraudulent; having the character of barratry. *Story*, J. 8 *Cranch's R.* 39.

BARRATRY. [Fr. *baraterie, baratterie*; L. Lat. *barataria*; from Ital. *barratria*, or Fr. *barat*, deceit, fraud.] In marine insurance. Fraudulent conduct on the part of the master of a vessel, in his character of master, or of the mariners, to the injury of the owner of the ship or cargo, and without his consent; including every breach of trust committed with dishonest views.* 3 *Kent's Com.* 305. An act committed by the master or mariners of a ship, for some unlawful or fraudulent purpose, contrary to their duty to their owners, whereby the latter sustain an injury. *Story*, J. 8 *Cranch's R.* 39. *Casaregis* confines it to this sense. *Disc.* 1, n. 77.

In a larger sense, barratry comprehends negligence as well as wilful misconduct, and in this sense it is used by the French writers. *Pardessus, Cours de Droit Com.* tome iii. n. 772. 3 *Kent's Com.* 305. In some recent American cases, the courts seem to be approximating to this meaning. *Id.* 300, note. "Every wilful act, on the part of the master, of known illegality, every gross malversation in his office or criminal negligence, by whatever motive induced, whereby the owner is damnified,

comes within the legal definition of barratry." *Shaw, C. J. 2 Cushing's R.* 512.

* * The term *barratry* is supposed by some to be derived from the Italian law, in which *barratria* has the sense of fraud committed in contracts and sales. *Dufresne*. Lord Ellenborough, 8 *East*, 126. Others have derived it from the Spanish *barateria*, which has a similar meaning. *Johnson, J. 3 Peters' R.* 222—230. *Emerigon*, who writes the word, *baratterie*, says it is a barbarous word unknown to antiquity. *Tr. des Ass.* ch. 12, sect. 3, § 1, citing *De Luca de Credito*, disc. 106, n. 28. *Straccha, Gl.* 31, n. 1. *Pasquier*, (liv. 8, ch. 3, p. 682,) makes it to be derived from *barat*, signifying fraud, trickery, falsehood. From whatever source it may have been introduced, there is little doubt that radically it imports fraud, and hence it is generally agreed in English and American law that fraud must be a constituent of the act of barratry. 12 *Johns. R.* 128. 14 *Mass. R.* 1. *Johnson, J. ub. sup. Abbott on Ship.* 183. But the word *fraud*, as used in defining this act, is itself not always understood in its stricter sense, as implying a dishonest or injurious intention. Hence acts done by the master of a vessel, even with the view of promoting the owner's interest, may nevertheless, in certain cases, amount to barratry. Accordingly, under the denomination of *barratry* are properly included not only the grosser acts or crimes of destroying or running away with a vessel or cargo, and stealing the cargo by the mariners, but also acts inconsistent with the owner's instructions, or not consonant to the laws of the land: such as sailing out of port without paying port duties, disregard of an embargo, breach of blockade, smuggling, cruising under a letter of marque against the owner's instructions and intentions, and deviation from the voyage in some cases. See *Abbott on Ship.* (Perkins' ed. 1846), 183, and note, *ibid.* The English and American cases are not altogether in harmony on this subject, the cause of which has been well explained by *Johnson, J.* in the opinion already referred to.

BARRATRY, *Barratrie, Baratry*. In Scotch law. The crime of a judge who receives a bribe for a judgment. *Skene de Verb. Sign. Brande*. See *Baratry, Barretor*.

BARRE. L. Fr. In old English law. Bar; the bar of a court. *Ore joo ne re-*

spondere pas, mes si j'eo fusse à la barre, j'eo vous respondisse bien toste; I will make no answer now, but if I were at the bar, I would answer you very soon. *Yearb. P. 6 Edw. III. 44.*

Bar; a plea in bar. *Dyer, 118, (Fr. ed.)* *Le barre nest bone*; the bar (plea) is not good. *Keilw. 11.*

Bar; the bar. The members of the legal profession, serjeants or barristers, practising in a particular court. *Fuit clerelement dit & agree per tout le barre & tout le banke*; it was clearly said and agreed by all the bar and all the bench. *Keilw. 40.*

BARRETOR, *Barrettor, Barrator, Barator, Barratoure.* [L. Lat. *barector, barecator, baraterius*. According to Coke, from Fr. *barat*, a wrangling suit, a brawl or quarrel; according to others, from Fr. *barat*, deceit, fraud.] In criminal law. A common mover, exciter or maintainer of suits and quarrels either in courts, or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. *Co. Litt. 368. Stat. Westm. 1, c. 18. 8 Co. 36. Latch, 194. Cro. Car. 192. Termes de la Ley. Cowell. Shaw, C. J. 11 Pick. R. 432, 434. See Barretry.*

In old law. A litigious, contentious person, (*litigator, contentious*); one who haunts the courts, (*qui prætorium nimis frequentat*). *Spelman. Hortensius Cavalcantus, cited ibid.*

In Scotch law. A simonist; a judge who takes a bribe for giving judgment. *Skene de Verb. Sign. voc. Barratrie.*

BARRETRY, *Barratry.* [L. Lat. *baratria, barateria*.] In criminal law. The act or offence of a barretor, (q. v.); usually called *common barretry*. The offence of frequently exciting and stirring up suits and quarrels, either at law or otherwise. *4 Bl. Com. 134. 4 Steph. Com. 262.* No one can be convicted of a single act of barretry; for every indictment for that offence must charge the defendant with being a *common barretor*. *4 Chitt. Bl. Com. 134, note. Steph. Crim. Law, 67. 4 Steph. Com. 262. See 11 Pick. R. 432. 1 Bailey's R. 379. U. S. Digest, Barratry.*

This word is sometimes written *barratry*, thus confounding it with quite a different offence. See *Barratry*.

BARRISTER, (and formerly) **BARRASTER**. [L. Lat. *barrasterius*, from *barra*, a

bar, q. v.] In English practice. One who appears at the bar of a court, in discharge of his duty as an advocate; one called to the bar (*ad barram*); a pleader at the bar, counsellor, or advocate; the lower of the two degrees of counsel in the English courts.*

Barristers were at first styled apprentices at law (*apprenticii ad legem*), or apprentices at the bars, (*apprenticii ad barras*), answering to the degree of bachelor in the universities. They seem to have been first appointed by an ordinance of King Edward I. in parliament, in the 20th year of his reign. *Spelman, voc. Apprenticii. Dugdale, Orig. Jur. 55. 1 Bl. Com. 23, note. 3 Id. 27. 3 Steph. Com. 385. See Apprenticius ad legem.* The great body of barristers are called, especially in the older books, *utter* or *outer barristers*, because they sit and plead *without (ouster) the bar*; as distinguished from those who have privilege to sit *within* the bar. See *Bar*.

BARTER. The exchange of one commodity, or article of property, for another. Distinguished from a sale, which is an exchange of goods or property for money.

BARTON, *Berton*, [from *bar*, a lord, and *tun*, a land or farm. *Spelman, voc. Baro*.] A word used in Devonshire, and other parts of England, for the demesne lands (*prædium dominicum*) of a manor; sometimes for the manor house itself; and in some places for outhouses and fold yards. *Spelman. Cowell. Blount. 2 Co. 66, Tooker's case. See Berton.*

BARUN. L. Fr. Baron; a baron. *LL. Gul. Cong. l. 23.*

Husband. *Mem. in Scacc. H. 18 Edw. I.*

BAS. Fr. [L. Lat. *bassus*.] Low; base; or inferior.

BAS CHEVALIERS. In old English law. Low, or inferior knights, by tenure of a base military fee, as distinguished from *barons* and *bannerets*, who were the chief or superior knights. *Cowell. Kennell's Gloss.*

BASCHE. L. Fr. Inquest; an inquest or inquisition. *LL. Gul. Cong. l. 4.* Howard renders it "the hundred."

BASE. [L. Fr. *bas*.] Low; inferior. See *infra*.

BASE COURT. In English law. Any inferior court that is not of record, as a court baron, &c. *Kitchin, 95, 96. Cowell.*

BASE ESTATE. [Fr. *bas estat*.] In

English law. That estate which base tenants have in their land. *Cowell*.

BASE FEE. In English law. An estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. As in the case of a grant to A. and his heirs, *tenants of the manor of Dale*; in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated. This kind of estate is a fee simple, because it is limited to the heirs general, and may by possibility endure forever, yet, as that duration depends upon the concurrence of collateral circumstances, which qualify and debase the purity of the donation, it is therefore not an absolute but a qualified, or base fee. 2 *Bl. Com.* 109, 110. 1 *Steph. Com.* 225.

A tenure in fee at the will of the lord. See *Base estate*, *Base tenant*. To hold in fee base, is to hold at the will of the lord. *Termes de la Ley. Cowell*.

BASE RIGHT. In Scotch law. A subordinate right; the right of a subvassal in the lands held by him. *Bell's Dict.*

BASE SERVICES. In old English law. Such services as were only fit for peasants, or persons of a servile rank; as to plough the lord's land, to make his hedges, to carry out his dung, or other mean employments: villein services. 2 *Bl. Com.* 61.

BASE TENANTS. In English law. Tenants who performed to their lords services in villenage; tenants who held at the will of the lord, as distinguished from *frank tenants*, or freeholders. *Cowell*, voc. *Base estate*.

BASE TENURE. [L. Lat. *bassa tenura*.] In English law. A holding by villenage, or other customary service, as distinguished from the higher tenure in *capite*, or by military service; or from free service generally. *Cowell*. 2 *Steph. Com.* 51.

BASILS. [L. Lat. *baselli*.] A kind of money or coin abolished by Henry II. *Hollinsh. Chron.* p. 67. *Spelman. Cowell*.

ΒΑΣΙΛΕΥΣ, Basilēus. Gr. King; emperor. The title given to the emperor Justinian, in some of his Novels. See *Nov.* 2, 3, 4, 6, *et seq.*

BASILEUS. Græco-Lat. [Gr. *basileus*.] King. A title frequently given to the king in England, in charters before the con-

quest, in imitation of that assumed by the emperors of the east and west. 1 *Bl. Com.* 242. *Selden's Tit. of Hon.* l. 2. 7 Ca. 44, [22.] 1 *Spence's Chancery*, 11.

BASILICA. Græco-Lat. [from Gr. *βασιλική*, royal, or *βασιλειος*, Basil.] A compilation of Roman and Greek law, in the Greek language, made during the latter part of the ninth and the beginning of the tenth centuries, under the superintendence of the Greek emperors of Constantinople. It was first undertaken by *Basilus Macedo*, (from whom it is supposed by some to derive its name,) and completed by his son *Leo Philosophus*, who published it as a code, A. D. 887. It consisted of sixty books, embracing the whole of Justinian's law collections, as well as the single constitutions issued by him and his successors. About the year 945, the emperor *Constantine Porphyrogenitus* undertook a new edition of the Basilica, (*Ἀνανέωσις τῶν βασιλικῶν*), through which the work has been preserved to the present time, although only thirty-six books have reached us complete. 1 *Mackeld. Civ. Law*, 61, § 75. This Romano-Greek code continued to be of authority until after the conquest of Constantinople, and the destruction of the Greek empire by the Turks, A. D. 1453; and even forms at the present day the principal foundation of the private law of Greece. *Id.* 64, § 77.

BASSE JUSTICE. Fr. In feudal law. Low justice; the right of a feudal lord to try persons accused of petty offences or trespasses. *Espit des Loix*, liv. 28, c. 42. See *Justice*.

BASSUS, Bassa, Basso. L. Lat. In old English law. Low. *Bassa haia*; a low hedge. *Reg. Orig.* 257 b. *Brownl.* part 2, 326. *De alto et basso*; of high and low. A term applied to the absolute submission of all differences. *Cowell*, voc. *Alto et basso*.

BASTARD. [L. Lat. *bastardus*, from Brit. *bastaerd*, illegitimate; or, according to Spelman, from Germ. *bastart*, which he derives from *bas*, low, and metaphorically, spurious, impure, base; and *stari*, Sax. *steort*, sprung, risen.] Of spurious origin, (*impure editus*;) base or low born. An illegitimate child; one who is born of an illicit union. One that is not only begotten, but born out of lawful matrimony. Though the law is not so strict as to require that a child shall be begotten, it makes it an indispensable condition to

render it legitimate that it shall be born after lawful wedlock. 1 *Bl. Com.* 454. 2 *Id.* 247. See 2 *Kent's Com.* 208. 4 *Id.* 413. 1 *Reeves' Hist. Eng. Law*, 117, note.

A child born after marriage, but under circumstances which render it impossible that the husband of his mother can be his father. 6 *Binn.* 283. *Bac. Abr.* Bastardy, A. *Bouvier*.

A child born beyond a competent time after the coverture has determined by divorce, or the death of the husband. *Id.* 2 *Stark. Evid.* (part 4,) 218, *et seq.*

BASTARD EIGNÉ. Fr. Bastard elder, or eldest. The child of two unmarried persons who afterwards intermarry. *Perk.* ch. 1, sect. 49, note, citing *Litt.* sect. 400. *Co. Litt.* 243 b. By the old common law, where a man had a bastard son, and afterwards married the mother, and by her had a legitimate son, the first or elder child, was termed *bastard eigné*, and the second or younger, *mulier puisné*, or simply *mulier*, (*filius mulieratus*, the son of a *mulier* or wife.) *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 247. See *Eigné, Mulier*.

BASTARDA. L. Lat. In old English law. A female bastard. *Fleta*, lib. 5, c. 5, § 40.

BASTARDIA. L. Lat. [from *bastardus*, q. v.] In old English law. The plea or objection of illegitimacy. *Bract.* fol. 405, 416, c. 19. *Fleta*, lib. 6, c. 39.

BASTARDUS. L. Lat. In old English law. Bastard; a bastard. *Fleta*, lib. 3, c. 10. *Id.* lib. 6, c. 39.

BASTARDY. [L. Lat. *bastardia*.] A defect of birth, objected to one begotten out of wedlock. *Bract.* fol. 405, 416. This term is applied in the old books to pleas of illegitimacy, to suits for calling one a bastard, and generally to any examination or trial whether a man's birth be legitimate or not. *Cowell*.

The state or condition of a bastard. 1 *Bl. Com.* 454. See *Bastard*.

BASTON. Fr. In old English law. A staff or club; a baton. *Son baston est depeyne*; his baton is broken. *Fet Assaver*, § 45. The officers of the wardens of the Fleet were called *bastons* from the painted staves by which they were distinguished. *Spelman. Termes de la Ley. Cowell. Officiarii de la baston*; officers of the staff. 10 *Co.* 65. 4 *M. Gr. & Scott*, 452, note.

In Scotch law, a baton is the proper

symbol of resignation; though a pen has, by immemorial custom, been made use of. *Bell's Dict.*

BASTONICUM. L. Lat. [from Fr. *baston*, q. v.] In old law. Close custody, (*arctissima custodia*.) *Spelman*.

BASUS, Bassus. L. Lat. In old English law. Struck measure. *Per basum tolnetum capere, et nihil in cumulo*; to take toll by strike, and not by heap. *Cowell*.

BATAILLE, Bataile. L. Fr. In old English law. Battel; the trial by combat or *duellum*. *La perilouse aventure de batailles*; the perilous chance of the combat. *Britt.* c. 25. *Venku par bataille. Id. ibid.* *La bataille fuit gagee en le eyre*; the battel was waged in the eyre. *Yearb. M.* 4 *Edw.* III. 12.

BATALARE. L. Lat. In old law. To handle or brandish weapons; to strike, (*percutere*); to fight, (*præliari*). *L. Baiwar.* tit. 2, cap. 10. *Spelman*.

BATALIUM, Batalia. L. Lat. [from *batalare*, q. v.] A battle or combat, (*prælium*.) *Spelman*.

BATARDISE. Fr. Bastardy. *Guyot, Inst. Feod.* ch. 27, sect. 10.

BATEL. L. Fr. Battel. *Correie de batel*; arrayed for battel. *Yearb. M.* 4 *Edw.* III. 12.

BATELLUS. L. Lat. [dimin. of *bat-tus*, a boat, q. v.] In old law. A little boat; a boat or skiff. *Spelman. Bract.* fol. 122. *Fleta*, lib. 1, c. 25, § 9.

BATERIA. L. Lat. In old English law. Battery; a battery. *Fleta*, lib. 2, c. 1, § 25.

ΒΑΘΜΟΣ, Βαθμῶς. Gr. [Lat. *gradus*.] In the civil law. A degree of kindred. *Nov.* 118, cc. 1, 2, 3.

BATIMENT. Fr. In French marine law. A vessel. *Ord. Mar.* liv. 1, tit. 14, art. 2.

BATSUEINS. [from Sax. *bat*, boat, and *swang*, a laborer.] In old English law. A boatman or seaman. *Domesday. Spelman*.

BATTAIL. An old form of *battel*, (q. v.) *Finch, Law*, b. 4, ch. 37.

BATTEL, Battail. [L. Fr. *bataille, bataile, batel*; L. Lat. *duellum, batalium*.] In old English law. Duel, or single combat. A species of trial or judicial combat, introduced into England, among other Norman customs, by William the Conqueror, in which a person accused of felony was allowed to fight with his accuser, under the apprehension that heaven would give

the victory to the innocent or injured party. 3 *Bl. Com.* 337. *Id.* 346. It was also used as a mode of trial of issues joined on writs of right, in which the parties fought by champions. 3 *Id.* 337. It was abolished by statute 59 *Geo. III.* c. 46. 3 *Steph. Com.* 582, note. 4 *Id.* 413. See further on this head, 3 *Bl. Com.* 337. *Glanv.* lib. 2, cc. 3, 4, 5. *Bract.* lib. 3, tr. 2, c. 21, fol. 140, 141 b. *Britt.* c. 22. *Yearb.* M. 1 Hen. VI. 29. *Dyer*, 301. *Termes de la Ley*.

BATTEL, *Batel*. L. Fr. [from L. Lat. *batellus*, q. v.] A boat; a ferry-boat. *Yearb.* (Addit.) T. 2 Edw. III. 13.

BATTERE. L. Lat. [from Sax. *battle*, a club.] In old European law. To beat or strike, (*verberare*, *percutere*); properly to beat with a club or stick, (*fustigare*). *Linum battere*; to beat flax. *Capitul.* 1, c. 81. *Spelman*. *Si servum aut ancillam battiderit*; if he beat a slave or maid-servant. *LL. Longob.* lib. 1, tit. 8, l. 30. *Battutus*; beaten. *L. Alam.* c. 93, § 2. *Spelman*.

BATTERY. [L. Lat. *batteria*, *bateria*, from *battere*, (q. v.) Lat. *verberatio*, *pulsatio*.] The unlawful beating of another. 3 *Bl. Com.* 120.

Any unlawful touching of the person of another, either by the aggressor himself, or any other substance put in motion by him, provided it be wilfully committed, or proceeded from the want of due care. 3 *Chit. Bl. Com.* 120, note. *Com. Dig.* Battery, (A). *Skin.* 387. 1 *Saund.* 14, note (c), Am. ed. 1846. *Hob.* 134. 1 *Russell on Crimes*, 751. *U. S. Digest*, Assault and Battery. Every battery includes an assault. *Hawk. P. C.* b. 2, c. 62, § 1.

BATTURE. Fr. In American law. A bottom of sand, &c., rising towards, or above the surface of a river; a species of alluvion. 18 *Louisiana R.* 122. This term is peculiar to the civil law of Louisiana. 3 *Kent's Com.* 428, note.

BATUS. L. Lat. [from Sax. *bat*, a boat.] In old English law. A boat. *Cowell. Towns. Pl.* 56.

BAUNC, *Baunk*. L. Fr. Bench; the Bench; the court so called. *Dune dette qe fust conu en Baunc*; of a debt which was acknowledged in the Bench. *Yearb.* P. 1 Edw. II. 5. *Mandee au baunk*. T. 1 Edw. II. 8. P. 7 Edw. II. 231.

BAYL. An old form of *bail*. *Finch, Law*, b. 4, c. 44.

BAYLE. An old form of *bailee*, (q. v.)

BAYLER. Fr. In old English law. To deliver; to lend. *Litt.* sect. 71. See *Bailler*.

BAYLEY. In old English law. Bailiff. This term is used in the laws of the colony of New Plymouth, Mass. A. D. 1670, 1671.

BAYLEMENT. An old form of *bailment*. *Finch, Law*, b. 2, ch. 18.

BAYLY, *Baylie*. L. Fr. A bailiff. 1 *Leon.* 50. *Litt. R.* 70.

BAYOU. A species of creek or stream common in Louisiana and Texas. An outlet from a swamp, pond or lagoon, to a river, or the sea. See 8 *Howard's R.* 48, 70.

BEACONAGE. [L. Lat. *beconagium*, from Sax. *beacon*, a signal.] In old English law. Money paid towards the maintenance of a beacon, or watch-fire. *Spelman*, voc. *Beconagium*. *Cowell*.

BEADLE, *Bedel*. [from Sax. *beodan*, to bid.] In English ecclesiastical law. An officer attached to a church, [or parish,] who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings to the parishioners, and execute its orders, to assist the constable in apprehending vagrants, &c. *Shaw's P. L. c.* 19, cited 3 *Steph. Com.* 93, note (s). See *Bedel*.

BEARER. One who bears or carries a thing from one person to another; as a letter, a check on a bank, a bank-note. The insertion of this word in a bill or check entitles the holder of it to payment on presentation, without any endorsement. See 3 *Kent's Com.* 75—78.

BEARERS. In old English law. Persons who bore down, or oppressed others. *Cowell*. Classed by stat. 4 *Edw.* III. c. 11, with *maintainers*.

BEARING DATE. [L. Lat. *gerens datum*.] Dated; having a date on the face. See 2 *Greenl. Ev.* § 160.

BEASTGATE, in Suffolk, England, imports land and common for one beast. 2 *Stra.* 1084. *Roscoe's Real Act.* 485.

BEASTS OF THE CHASE. [Lat. *feræ campestris*.] In English law. The buck, doe, fox, martin and roe. *Maxwood*, part 2, c. 4, n. 2. *Co. Litt.* 233 a. In a common and legal sense, the term extends to all beasts of the forest. *Id. ibid.*

BEASTS OF THE FOREST. [Lat. *feræ sylvestres*.] In English law. The hart, hind, hare, boar and wolf. *Maxwood*, part 2, c. 4, n. 1. *Co. Litt.* 233 a.

Legally, the term includes all wild beasts of venery. *Id. ibid.*

BEASTS OF THE WARREN. [*Lat. fera warrenæ.*] In English law. The hare, coney [and roe.] *Manwood*, part 2, c. 4, n. 3. *Co. Litt.* 233 a.

BEAUMANOIR. A celebrated French law writer, nearly or quite contemporary with the English Bracton, whose work, entitled *Coustumes de Beauvoisis*, contains an account of the law and practice of the French courts as it existed in his time. Dr. Robertson makes him a contemporary of Defontaines, who wrote in the reign of St. Louis, but Montesquieu places him after that writer, (whom he calls the oldest law writer in France,) and says he wrote a little after St. Louis' death, which happened A. D. 1270. 1 *Rob. Charles V.* Appendix, note xxv. *Esprit des Lois*, liv. 28, c. 38. According to Mr. Barrington, he kept the courts of the Comte de Clermont, and his treatise gives an account of the customary laws of Beauvoisis (a district about forty miles to the northward of Paris) as they prevailed in the year 1283. The same writer observes that this treatise is so complete, and throws so much light upon the ancient common law of England, that it cannot be too much recommended to the perusal of the English antiquary, historian or lawyer. *Obs. Stat.* 494, note [c]. It is, however, rarely referred to by English writers. *Marvin's Leg. Bibliog.*

BEAUPLEADER, Beupleder, Bewpleader. [*Fr. beuplaider, beu pleder*; *L. Lat. de pulchre placitando*; from *beau, pulcher*, fair, and *plaidier, placitare*, to plead.] In old practice. Fair pleading; apt or correct pleading; or, according to Mr. Reeves, the fair or favorable hearing of a plea, or suit. See *infra*.

* * * Fines were anciently imposed by courts in England, for *beaupleder*, (*pro pulchre placitando*), or fair pleading. *Fleta*, lib. 2, c. 66, § 18. The statute of Marlebridge, 52 Hen. III. c. 11, (affirmed by statute Westm. 1, c. 8,) ordained that such fines should no longer be taken, and gave a writ directed to the sheriff, bailiff, or whoever would demand the fine, prohibiting him from demanding it. *Id. ibid.* §§ 19, 20. *Cowell.* 2 *Reeves' Hist. Eng. Law*, 70. See *Britt.* c. 20. The common explanation of these terms in the old books is not very satisfactory. It is said by Fitzherbert that the fine for beaupleder meant a fine for not pleading fairly, or aptly to

the purpose. *F. N. B.* 270 a. This is also the view of Sir Matthew Hale. *Hist. Com. Law*, c. 7. Lord Coke considers it as a fine imposed for the privilege of pleading fairly, by way of amendment, after a former vicious plea; which seems a more natural explanation. 2 *Inst.* 122, 123. The author of the *Termes de la Ley* speaks of it as a fine taken of a party by a sheriff, or other bailiff, in his court, to the end that he shall not plead fairly, &c. Mr. Reeves thinks it did not signify a fine for amending a wrong plea, but a fine taken of suitors by bailiffs or judges of inferior courts, for a fair or perhaps favorable hearing of their cause, which fair hearing was called *pulchre placitare*, or *beaupleder*. 2 *Reeves' Hist. Eng. Law*, 70.

BEC. Sax. A book. See *Boc*.

BED', BEDF. Abbreviations of *Bedfordshire*, in old pleadings. 1 *Instr. Cler.* 28. *Towns. Pl.* 147.

BED. The channel of a stream, as distinguished from its banks.* "The *bed* is that soil so usually covered by water, as to be distinguishable from the banks by the character of the soil, or vegetation, or both, produced by the common presence and action of flowing water." *Curtis*, J. 13 *Howard's R.* 426.

BEDEL, Bedell, Beadle. [*L. Lat. bedellus*, Sax. *bydel*, from *bydde*, [or *beodan*], to bid, publish or declare; or, according to Spelman, to ask, beg, pray.] In English law. A crier, (*præco*), messenger, summoner, apparitor, bailiff, underbailiff. *Spelman. Blount. Co. Litt.* 234 b. A crier or messenger of a court, who cites parties to appear, and answer therein. *Cowell. Termes de la Ley.*

An officer of the forest, similar to a sheriff's special bailiff. *Manwood. Cowell. Blount.*

A collector of rents for the king. *Plowd.* 199, 200.

A well known parish officer. See *Beadle*.

BEDELARY. [*Fr. bedelarie*; *L. Lat. bedelaria*.] In old English law. The district of a bedel; the same as *bailiwick* is the district of a bailiff. *Cowell. Litt.* sect. 379.

BEDELLUS. *L. Lat.* In old English law. A beadle. *Spelman. Cart. de Forest.* c. 7. Sometimes called in old Scotch law, *pedellus*, (q. v.)

A hayward. *Towns. Pl.* 35.

BEDEREPE. [*L. Lat. bedrepium, bid-ripa, precaria*; from Sax. *bydde*, to entreat, or pray, and *repe*, to reap corn.] In old

English law. A service which some tenants were bound to perform; as to reap their landlord's corn in harvest. *Cowell. Blount. Spelman*, voc. *Bidripa*.

BEFORE. [Lat. *coram*.] In practice. In the presence of. A court is said to be held *before* the judges who compose it; an affidavit to be sworn to *before* the officer administering the oath, and the like. See *Coram*. The term expresses the idea of authority or judicial power, as united with personal presence.

"BEFORE ME." In practice. Ordinary words in the jurats of affidavits. Held to be essential. 6 *Ad. & El.* (N. S.) 528. See *Jurat*.

BEHAVIOUR AS HEIR. See *Gestio pro hærede*.

BEHETRIA. Span. An ancient kind of seignior in Spain. *White's New Recop.* b. 2, tit. 2, ch. 2, note.

BEHOOF. Profit; advantage. A formal word in conveyancing, used in connection with the words "use and benefit."

"BEING" may sometimes be taken in the future tense. See 3 *Leon.* 54, 55, case 79.

BELIEF. [Lat. *fides*, faith.] In the law of evidence. A persuasion of the truth, or an assent of the mind to the truth of a statement, or fact, formed, in the way of inference from some other fact, or from information, as distinct from personal knowledge. See 1 *Greenl. Evid.* § 7, et seq.

BELLAGINES, Bilagines. L. Lat. [from Goth. *by*, a town, and *lagen*, law.] Municipal laws of the Goths. *Jornandes de Reb. Get.* c. 11. *Spelman*. See *Bilagines, By-laws*.

BELLARE. L. Lat. [from *bellum*, q. v.] In the law of nations. To war; to make war. *An bellare unquam justum sit*; whether it is ever right to make war. *Grotius de Jur. Bell.* lib. 1, cap. 2.

BELLIGERENT. [from Lat. *bellum*, war, and *gerens*, carrying on.] In the law of nations. A nation engaged in war, as distinguished from a neutral. See 1 *Kent's Com.* Lect. V.

BELLUM. Lat. In public law. War. An armed contest between nations.* Defined by Grotius as *status per vim certantium*; the state of those who forcibly contend with each other. *De Jur. Bell.* lib. 1, c. 1, § 2. *Jus belli*; the law of war. *Id.* lib. 1, c. 1.

Bello paria cedunt reipublicæ. Things acquired in war belong, or go to the state.

1 *Kent's Com.* 101. Sir W. Scott, (*The Elzebe*), 5 *Rob. Adm. R.* 155, 163. 1 *Gallison*, 558. The right to all captures vests primarily in the sovereign. A fundamental maxim of public law.

The trial by single combat, or *battel*; the *duellum*. *Cowell*.

"BELONGING," in a deed and lease, construed. 1 *Chitt. Gen. Pr.* 157, 475, and note. 2 *Bing.* 76.

BELOW. [Lat. *infra*.] In practice. Inferior; of inferior jurisdiction. The court from which a cause is removed by appeal or writ of error, is called "the court below."

Preliminary; auxiliary or instrumental. Bail to the sheriff is called "bail below," as being preliminary to, and intended to secure the putting in of bail above, or special bail. 3 *Bl. Com.* 291. See *Above*.

BENCH. [L. Lat. *bancus*; L. Fr. *banke, banque*.] A seat of judgment, or tribunal for the administration of justice; the seat occupied by judges in courts.

The judges themselves, as occupying the judgment seat in courts. The term is figuratively used in this sense as a professional title, just as *the bar* is employed to denote the legal profession.

The ancient and original name of the English Court of Common Pleas, or Common Bench, as it is sometimes called. "Attaint was brought in *the Bench*." *Dyer*, 53 b. By the words, "the said court of the Bench," in a plea, the Court of Common Pleas shall be intended. 7 *Taunt.* 271. See *Bancus*.

* * * The practice of appropriating an elevated and separate seat for the use of judges, seems to have been a common one from the earliest times. When the Roman prætor heard causes, he sat in the *forum* or *comitium* on a *tribunal*, (in, or *pro tribunali*), which was a kind of stage or scaffold (*suggestum*), made of wood, and moveable. *Cic. in Vat.* 14. *Suet. Cæs.* 84. In matters of less importance, he judged and passed sentence without form, at any time, and in any place, whether sitting or walking; and then he was said *cognoscere e, vel de plano*; to hear causes from, or on a level with his suitors, (*ex æquo loco, et non e tribunali, aut ex superiori loco*.) *Cic. Fam.* iii. 8. *Cæsin.* 17. *Suet. Tib.* 33. The inferior magistrates or judges, (*judices*), when they sat in judgment, did not use a tribunal, but occupied *subsellia*, or lower seats. *Ascon in Cic. Suet. Claud.*

23. Hence they were sometimes called *judices pedanei*, either a *pedibus*, from the feet, (as the prætor sometimes heard causes while standing, or on foot; *supra*;) or because they administered justice *pede plano*, with their feet on a level with those of the suitors. *Calvin's Lex. Jurid. voc. Pedanei*.

Among the ancient Britons, justice was administered from seats or tribunals constructed of mounds or banks of turf, (*e tribunibus aggesto cespite constructis*.) *Spelman*. The right of occupying a bench or tribunal (termed the *jus banci*, or right of bench,) was from an early period considered to be a peculiar privilege of the king's courts in England; the judges of inferior courts, such as hundred courts, and courts baron, being supposed to administer justice without such a formality. See *High justice*. These last are compared by *Spelman* to the *judices pedanei* of the Roman law, (*supra*;) from which source the idea of the distinctive privilege of a *bench* was most probably borrowed. Such inferior judges were called in France *juges dessous l'orme*, (judges under the elm,) because they used to sit under an elm or other tree, near the lord's house. *Spelman, voc. Bancus*. And in much later times, in England, the hundred court at Freibridge, in Norfolk, was held under an oak at Geywood; and the court for the hundred of Woolsey, in Herefordshire, was held under an oak near Ashton, which was called "the hundred oak." *Id. ibid. Blount, voc. Bank*.

BENCHERS. The principal officers of the English Inns of court. 1 *Steph. Com.* 30. 3 *Co. pref. xviii*. 4 *Reeves' Hist. Eng. Law*, 433. *Holthouse*. See *Inns of Court*.

BENCH WARRANT. In criminal law. A warrant issued by or from a *bench*, or court. A process for the arrest of a party against whom an indictment has been found. 1 *Chitt. Crim. Law*. 339. 4 *Steph. Com.* 387. 2 *N. Y. Rev. Stat.* [728], 609, § 55.

BENE. Lat. [L. Fr. *bien*.] In old English law. Well; sufficiently; in due form; safely. *Bene et in pace*; well and in peace. *Mag. Cart. Johan. c. 63*. See *Bien*.

Benedicta est expositio quando res redimatur a destructione. That is a blessed exposition, (or interpretation) when a thing (or subject) is saved [by it] from destruction. 4 *Co. 26*. See *Ut res magis valeat quam pereat*.

BENEFICE. [L. Lat. *beneficium*.] In English ecclesiastical law. An ecclesiastical living or church preferment, called in

Magna Charta, (c. 14), *beneficium ecclesiasticum*.

In its technical sense, this term includes ecclesiastical preferments to which rank or public office is attached, otherwise described as ecclesiastical dignities or offices, such as bishoprics, deaneries and the like; but, in popular acceptance, it is almost invariably appropriated to rectories, vicarages, perpetual curacies, district churches and endowed chapelries. 3 *Steph. Com.* 77. By act of Parliament, 1 and 2 *Vict. c. 106*, s. 124, a distinction is expressly made between benefices, and such preferments as have either rank or public office connected with them. *Id. ibid. note (k)*.

Benefice is a term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feudal tenure. 3 *Steph. Com.* 77, note (i). 4 *Bl. Com.* 107. See *Beneficium*. When the principle of tenure of a superior came to be applied to church preferments, the name of the estate thus holden was also adopted, and hence the care of souls or parishes in England obtained the appellation of *benefices*. 4 *Bl. Com.* 107. 4 *Steph. Com.* 206. *Tomlins*.

BENEFICIAL. [from Lat. *beneficium*, benefit.] Of benefit or advantage; producing or attended with profit or advantage; having or enjoying a benefit or profit. A term applied both to estates and persons; as *beneficial interest*, *beneficial owner*.

BENEFICIARE. L. Lat. [from *beneficium*, q. v.] In civil and feudal law. To grant or confer a benefice, fief or fee; to enfeoff, (*infeodare*.) *Spelman*.

BENEFICIARIUS. L. Lat. [from *beneficium*, q. v.] In civil and feudal law. A beneficiary; one who held a benefice; a feudatory. *Spelman*.

BENEFICIARY. A word suggested by Mr. Justice Story, as proper to be substituted in place of the old established phrase *cestuy que trust*, which he terms "an awkward, barbarous, foreign idiom." 1 *Story's Eq. Jur.* § 321, and note. See *Cestuy que trust*. It has been, to some extent, adopted.

BENEFICIUM. Lat. In early feudal law. A benefice; a permanent stipendiary estate; the same with what was afterwards called a *fief*, *feud*, or *fee*, (qq. v.) 3 *Steph. Com.* 77, note (i). *Spelman*. A grant of lands to a retainer or follower, as a return for services to be rendered. 1 *Steph. Com.* 161. So called, according to some,

because it was a gratuitous donation, given out of the mere *good will* (*ex mero beneficio*) and liberality of the grantor. *Ducange*. 1 *Robertson's Charles V.* Appendix, note viii. In the second Book of Feuds, a *beneficium* is defined to be that which is given to one, out of *good will*, (*ex benevolentia*), in such a manner that the property (*proprietas*) of the immoveable thing bestowed remains with the giver, but the usufruct passes to the receiver, so as to belong to him and his heirs forever. *Feud. Lib.* 2, tit. 23, § 1. The better opinion, however, appears to be that the name was adopted from the *beneficia* of the Roman emperors, which appear to have signified any kind of favors, privileges or emoluments, granted to a subject by the sovereign. *Sueton. Tiber.* 12. *Id. Tit.* 8. *P. Cyclopædia*. The term *beneficium* gave place to that of *feudum* about the close of the tenth century. It occurs very frequently in the Books of Feuds. See *Feud. Lib.* 2, tit. 1, 3, 9, 11, 12, 27, 34, 38, 39, 51, 55. See *Feudum*.

BENEFICIUM. Lat. In the civil law. A benefit or favor; any particular privilege. *Dig.* 1. 4. 3. *Cod.* 7. 71. 1, 4. 1 *Mackeld. Civ. Law*, 182, § 189. Used in the same sense in English law, as in the old phrase *beneficium clericale*, (the clerical privilege,) commonly translated *benefit of clergy*.

BENEFICIUM COMPETENTIÆ. Lat. In civil and Scotch law. The privilege of competency. A privilege which the grantor of a gratuitous obligation was entitled to, by which he might retain sufficient for his subsistence, if, before fulfilling the obligation, he was reduced to indigence. *Bell's Dict.*

BENEFICIUM DIVISIONIS. Lat. In the civil law. The privilege of division. A privilege given to a cautioner, (surety,) by which, in place of being liable for the whole debt, he was entitled to insist that the debt should be demanded from the whole solvent cautioners *pro rata*. *Bell's Dict.*

BENEFICIUM ORDINIS. Lat. In the civil and Scotch law. The privilege of order. The privilege of a surety to require that the creditor should first proceed against the principal and exhaust his remedy against him, before resorting to the surety. *Bell's Dict.* See *Discussion*.

BENEFIT OF CLERGY, otherwise called **CLERGY.** [L. Lat. *beneficium*, or *privilegium clericale*.] In English criminal

law. The clerical privilege; the privilege of the clergy; a clerk's privilege.* An exemption from capital punishment in cases of capital felony, anciently allowed to criminals in holy orders, or (what was once equivalent,) *able to read*, and originally allowed to these only, though afterwards extended both to clergy and laity, and confined on the other hand to capital felonies of the lighter kind. 4 *Steph. Com.* 121. See *Clergy*, *Clergyable*, *Clerk*. The privilege was this:—if a person convicted of a capital felony was a clerk in orders, he was absolutely discharged, and handed over to the court christian; if a layman, under the degree of a peer, who could read, he was discharged upon being *burnt in the hand*, that is, marked with a hot iron upon the brawn of the left thumb. See *Burning in the hand*. Whipping, fine and imprisonment were afterwards substituted for burning. *Barringt. Obs. Stat.* 442—444, and notes. 4 *Bl. Com.* 364—374. 4 *Steph. Com.* 436, note (b). Benefit of clergy was abolished in England by statute 7 & 8 Geo. IV. c. 28. 3 *Steph. Com.* 9, note (a). 4 *Id.* 121, 436, note (b).

* * The following extract from the case of *Armstrong v. Lisle*, which was a criminal appeal, (1 *Salk.* 61,) will serve to illustrate the manner in which this privilege was claimed, tried, and allowed by the court. The prisoner (or appellee,) being found guilty of manslaughter, and being asked what he had to say why judgment should not pass against him, *prayed his clergy*; (that is, claimed the benefit of clergy.) "Hereupon," says the reporter, "his clergy was allowed him, and he was tried by the ordinary of —, who gave him a psalm to read, whereof he read the first verse; and then Sir Samuel Astrey asked the ordinary, '*legit vel non?*' (does he read or not,) who answered '*legit*,' (he reads,) whereupon the executioner burnt him without the bar, on the brawn of the left hand," &c. It is said that the ordinary usually gave the criminal who prayed his clergy, the fifty-first psalm to read, (which is called in the vulgate, from its initial word, the *Miserere*;) hence termed the psalm of mercy. *Cowell*, voc. *Miserere*.

BENEPLACITUM. L. Lat. In old English law. Good pleasure. *Ipsius patris* beneplacito; by the pleasure or good will of his father himself. 1 *Bl. Com.* 351. See *Durante beneplacito*.

BENERTH, Benereth. In old English

law. A service which a tenant rendered to his lord, with his plough and cart. *Lamb. Itin.* 212. *Co. Litt.* 86. *Cowell. Spelman.*

BENEVOLENCE. In old European law. An extraordinary aid granted by freemen to their sovereign, as a voluntary gratuity. *Stow's Annals*, 701. 1 *Robertson's Charles V.* Appendix, note xxxviii. The same name was retained after such contributions had become compulsory. *Id. ibid.* Benevolences were introduced into England by Edward IV. as modes of raising money, and were finally abolished by the Petition of Right, 3 Car. I., and by statute 1 W. & M. st. 2, c. 2. 1 *Bl. Com.* 140. 4 *Reeves' Hist. Eng. Law*, 127, 128.

BENIGNE. Lat. [from *benignus*, q. v.] Liberally; favorably; benignly.

Benigne faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat. Constructions [of written instruments] are to be made liberally, on account of the simplicity of the laity, [or common people,] in order that the thing [or subject matter] may rather have effect than perish, [or become void.] *Co. Litt.* 36 a. *Broom's Max.* 237, [413.] A liberal construction shall be put upon written instruments, so as to uphold them, if possible, and carry into effect the intentions of the parties. *Id. ibid.*

This celebrated maxim, one of the oldest in the law, and still frequently quoted, is taken by Lord Coke from Bracton, or rather, made up of portions of the text of that author. Bracton's own words are, (fol. 95 b, closing a sentence,) *Benigne enim faciendæ sunt interpretationes, ut res magis valeat quam pereat.* The words "*propter simplicitatem laicorum*" are taken from the preceding sentence, and the preceding clause of the same sentence, in which he observes that grants of advowsons by laymen would not be invalidated on account of the incorrect language of the instrument, (*propter incongruam dictionem donationis*), but would be established by a benign interpretation, *propter simplicitatem laicorum.* The antiquity of the rule appears from his remark in the same sentence,—*et sic fit interpretatio ab antiquis.* *Id.* fol. 95 a, b. In *Piers and Hoe's* case, (1 *Leon.* 125,) Lord Coke (arg.) quotes the maxim nearly in the words of Bracton, (*supra*), and calls it "Bracton's rule."

BENIGNUS. Lat. In civil and old English law. Kind; favorable; indulgent; liberal; benign; as opposed to strict, harsh

or narrow. *Ex benigna interpretatione*; by a liberal interpretation. *Bract.* fol. 95. *Benignâ interpretatione.* *Dig.* 39. 5. 16. *Cod.* 6. 27. 1. *Benignior*; more favorable. See *infra*.

Benignior sententia in verbis generalibus non dubiis est preferenda. In [construing] general or doubtful words, the more favorable sense is to be preferred. 4 *Co.* 15. This maxim seems to be derived from those of the civil law: *Semper in dubiis benigniora preferenda sunt.* *Dig.* 50. 17. 56. 2 *Kent's Com.* 557. *In re dubia, benigniorem interpretationem sequi non minus iustius est quam tutius.* In a doubtful matter, it is not less just than safe to adopt the more liberal interpretation. *Dig.* 50. 17. 192. 1.

In contractibus, benigna; in testamentis, benignior; in restitutionibus benignissima interpretatio faciendæ est. In contracts, the construction is to be liberal; in wills, more liberal; in restitutions, most liberal. *Co. Litt.* 112 a.

Benignius leges interpretandæ sunt quæ voluntas earum conservetur. Laws are to be more liberally interpreted, in order that their intent may be preserved. *Dig.* 1. 3. 18.

BEQUEATH. To give personal property by will. Where personal property is intended to be given by will, the proper words to be employed are, "I give and bequeath," &c. Where real property is to be given, the words "I give and devise" should be used. See *Devise*. But the word "bequeath," though not, in its primary and legal acceptance, synonymous with "devise," may be so construed, if the context requires it. 36 *Maine R.* 211.

BEQUEST. A gift of personal property by will; a gift of a legacy. See *Legacy*, *Devise*.

BERCARIA, Berceria, Berqueria. L. Lat. [from Fr. *berger*, a shepherd.] In old English law. A berchery, a sheep-fold, sheep-cote or pen. *Fleta*, lib. 2, c. 76, § 2. *Id.* lib. 4, c. 20, § 6. *Cowell. Blount. Co. Litt.* 5 b.

BERCARIUS. L. Lat. [from Fr. *berger*.] In old English law. A shepherd. *Fleta*, lib. 2, c. 79, § 8.

BERCATOR. L. Lat. In old English law. A shepherd. *Stat. Consuet. et Ass. Forestæ*, cited *Barringt. Obs. Stat.* 217. Mr. Barrington considers this a contraction of the Lat. *vervicator*, (from *vervez*, an ewe,) converted into *berbicator*.

BEREWICA, Berewicha, Berewichus,

Berewita, Berwita. L. Lat. [from Sax. *berie*, a manor, and *wic*, a village; or (*berewita*) from *ber*, low, and *wite*, fine, O. Eng. *berewike*.] In old English law. A manor, or rather a part of a manor, separated from the main body; a smaller manor, belonging to a larger one, (*manerium minus ad majus pertinens*.) *Spelman*.

A hamlet, or small village, appurtenant to some town or manor, (*villula, manerii vicus*.) *Id.* *Blount*, voc. *Berwica*. A word of frequent occurrence in Domesday Book. *Id.* According to Lord Coke, it signifies a town. *Co. Litt.* 116 a.

A corn-farm. *Spelman*.

BERGHMAISTER, *Barmaster, Barmmer*. [from Sax. *berg*, a mountain.] An officer having charge of a mine. A bailiff, or chief officer among the Derbyshire miners, who, in addition to his other duties, executes the office of coroner among them. *Blount. Cowell*.

BERGHMOTE, *Bergmoth*. [from Sax. *berg*, a hill, and *mote*, an assembly.] In old English law. A court for deciding controversies among the Derbyshire miners. *Blount. Cowell*.

BERGIUM. L. Lat. [Sax. *berg*, *berig*, *beorg*, *berg*.] In old law. A city, town, burg or borough. *Berg*, (Sax.) is properly a mountain. *Spelman*.

BERIA, *Buria*. L. Lat. [In English names, *Berie*, *Bery* and *Bury*.] In old English law. A city, burgh, habitation, or manor, (from Sax. *byr*, and *bur*, a dwelling.) *Spelman*.

A plain adjoining a town. *Dufresne. Cowell*.

BERK'. An abbreviation of *Berkshire*, in old records. *Towns. Pl.* 147.

BERNET. Sax. [from *byrnan*, to burn: Lat. *incendium*.] In Saxon law. Burning; the crime of house-burning, now called arson. *Cowell. Blount*.

BERQUARIUM. L. Lat. In old English law. A sheep-fold. *Domesday. Spelman*, voc. *Barcarium*.

A tan-house. *Co. Litt.* 5 b.

BERQUARIUS. L. Lat. [from Fr. *berger*.] In old English law. A shepherd. *Domesday. Spelman*.

BERRA. L. Lat. In old law. A plain; open heath. *Cowell. Berras assartare*; to grub up barren heaths. *Id. Spelman*. See *Beria*.

BERSÆ. L. Lat. In old European law. Barriers; enclosures; limits. *Spelman*.

BERTHINSEK, *Birdinsek, Byrthinsak*.

O. Sc. [from Sax. *byrthin*, burden, and *sac*, a sack.] In old Scotch law. A law which exempted from capital punishment, one who stole as much food or meat as he could carry on his back in a sack. *Reg. Maj.* lib. 4, c. 10, de yburpananaseca. *Skene de Verb. Sign.* See *Spelman's* explanation of this word, voc. *Byrthinsak*.

BERTON. [L. Lat. *bertona*.] In English law. That part of a great country farm where the barns, stables, and other inferior offices stand, and wherein cattle are foddered, and other country business managed. *Cowell. Spelman*, voc. *Bertona*. In Devonshire, according to *Cowell*, they called a great farm a *berton*; a small farm a *living*. See *Barton*.

Bertonarii. Farmers or tenants of *bertons*, who seem to have been tenants at will. *Cowell. Blount*.

BERWICA. L. Lat. In old English law. A manor, or part of a manor; a village appurtenant to a manor. *Cowell. Spelman*, voc. *Berewica*.

BES, (pl. **BESSES**.) Lat. In the Roman law. A division of the *as*, or pound, consisting of eight *uncia*, or duodecimal parts, and amounting to two-thirds of the *as*. 2 *Bl. Com.* 462, note (m). See *As*.

Two-thirds of an inheritance. *Inst.* 2. 14. 5. Eight per cent. interest. 2 *Bl. Com.* *ubi supra*.

BESÆL. L. Fr. A great grandfather. *Besæle*; a great grandmother. *Britt.* c. 89. *Besael, ael, piere, fitz*; great grandfather, grandfather, father, son. *Id. ibid.* *Besæle, aele, mere, file*; great grandmother, grandmother, mother, daughter. *Id. ibid.*

BESAYEL, *Besael, Besayle*. L. Fr. [from *besael, besayeul*, a great grandfather.] In old English law. A writ (L. Lat. *breve de proavo*), which lay where a great grandfather died seised of lands and tenements in fee simple, and on the day of his death a stranger abated, or entered and kept out the heir. *Reg. Orig.* 226. *F. N. B.* 221. D. 3 *Bl. Com.* 186. Now abolished with other real actions.

BESONGNES. L. Fr. Business. *Yearb.* M. 20 Hen. VI. 27.

BEST EVIDENCE, what is. 1 *Stark. Evid.* 102, 389. The best attainable evidence must be adduced to prove every disputed fact. *Id. ibid.*

BETAGHII, *Betagii* or *Betaghies*. A name anciently given to villeins in Ireland. *Barringt. Obs. Stat.* 302, note [t]. *Spelman*, voc. *Betagii*.

BETROTHMENT. [L. Lat. *desponsatio*.] A mutual promise, or compact between two parties, by which they bind themselves to marry. The word imports giving one's *troth*, i. e. true faith, or promise. It is the same with what is called by civilians and canonists, *sponsalia*, or espousals, and sometimes *desponsation*, and by the French *finances*. *Encyclop. Amer.* See *Sponsalia*.

BETTER EQUITY. A term applied, in English equity jurisprudence, to the equity of a second incumbrancer taking a security which a prior incumbrancer did not; where the security was of a nature to protect him against any subsequent dealing to his prejudice, by the party who had the legal estate; such better equity giving him a priority of claim.* 1 *Chitt. Gen. Pr.* 470, note. 3 *Russell's R.* 1—65. A party may sometimes gain a better equity, by giving notice of an incumbrance held by him. 1 *Chitt. Gen. Pr.* 470.

BETTERMENTS. In American law. Beneficial improvements made upon lands by the occupant or possessor, in building, fencing, draining, &c. *Encyclop. Amer.* 2 *Kent's Com.* 334, et seq. This word is a very literal translation of the *meliorationes* of the civil law. *Cod.* 4. 66. 3. 1 *Mackeld. Civ. Law*, 358, § 325.

"BETWEEN." This word, in the boundaries of lands in deeds, excludes the *termini* named. 2 *Hilliard's Real Prop.* 340. Wilde, J. 5 *Metcalf's R.* 441. So, where it is used in an instrument as descriptive of time. A policy of insurance on goods to be shipped *between* two certain days, does not cover goods shipped on either of those days. *Id.* 439. And see 13 *Howard's R.* 82, 77 arg. *Amb.* 656, note (1), 2d ed.

BEUDUM, Beodum. L. Lat. [Sax. *beod*.] In old European law. A table. *L. Salic.* tit. 48. *Spelman*.

BEWPLEADER. See *Beaupleader*.

BEYOND SEA, (Lat. *extra*, or *trans mare*;) BEYOND THE SEAS, (*extra maria*;) BEYOND THE FOUR SEAS, (*extra quatuor maria*.) Words of frequent occurrence in English statutes, treatises and reports; originally suggested, no doubt, by the geographical position of England, and more peculiarly appropriate to the whole island of Great Britain. See *Four Seas*. The phrase "beyond the seas" occurs, in particular, in the statute of limitations, 21 Jac. I. c. 16, and is said to have

been introduced on the union of the crowns, in place of the phrase "out of the realm," which previously had always been used. 1 *W. Bl.* 286. It does not seem, however, to have always been literally construed, and at the present time, no part of the United Kingdom of Great Britain and Ireland, nor the isles of Man, Guernsey, Jersey, Alderney or Sark, nor any islands adjacent to any of them, being part of the Queen's dominions, are deemed *beyond the seas*. *Holthouse. Wharton's Lex. voc. Limitation*. "Beyond the seas" is called "the old and true expression." *Dennison, J.* 1 *W. Bl.* 287. It has been recently held in England, that these words are, in legal import and effect, synonymous with the words "out of the territories," "out of the realm," "out of England," and are not to be interpreted literally. 32 *Eng. Law & Eq. R.* 84.

The same phrase occurs in the statutes of limitations of several of the United States, which have generally been framed after the English statute, and without much regard, in this particular, to strict geographical propriety. In most of these, it has been construed to mean, "out of the state," or "without the limits of the state." 3 *Wheaton's R.* 541. 11 *Id.* 361. 14 *Peters' R.* 145. 5 *McLean's R.* 487. In Pennsylvania, on the other hand, it has been construed to mean "without the limits of the United States," which approaches the literal signification. 2 *Dallas' R.* 217. 1 *Yates' R.* 329, S. C. *McLean, J.* 6 *Peters' R.* 291, 300. The same construction has been given to it in Missouri. 20 *Missouri R.* 530. See *Angell on Lim.* §§ 200, 201.

BIAS. A leaning or inclination of the mind in a particular direction, or in favor of a particular person or class of persons. See 12 *Georgia R.* 444.

BIBAION, βιβλιον. Gr. In the civil law. A or the libel, (*libellus*;) the libel of a plaintiff. *Nov.* 53, tit. *Id.* c. 3, §§ 1, 2. Otherwise called *αἰτιάσεως βιβλιον*, the libel of demand, (*libellus conventionis*.) *Id.* c. 3. The answer of the defendant was termed *ἀντιβιβλιον*, (*libellus responsionis*.) *Id.* § 2.

BIBLIOTHECA. Græco-Lat. [Gr. *βιβλιοθήκη* from *βιβλιον*, a book, and *θήκη*, a repository.] In the civil law. A book-case; a library. As to the construction of this word, and whether the books themselves would pass under it, see *Dig.* 32. 52. 7.

BIDALE. [from *bid*, and *ale*, a drinking.] In old English law. An invitation to drink, (*precaria potatoria*.) An invitation of friends to drink at some poor man's house, with a view to contribute in charity. *Spelman. Cowell.*

BIDDINGS. Offers of a price for goods or other property put up for sale at auction. See 4 *Kent's Com.* 191, 192. See *Opening biddings*.

BIELBRIEF. Germ. [Dutch *bylbrief*; Danish, *bilbrev*.] In European maritime law. A document furnished by the builder of a vessel, containing a register of her admeasurement, particularizing the length, breadth and dimensions of every part of the ship. It sometimes also contains the terms of agreement between the party for whose account the ship is built, and the ship builder. It has been termed in English, the *grand bill of sale*; in French, *contrat de construction ou de la vente d'un vaisseau*, and corresponds in a great degree with the English, French and American register, (q. v.) being an equally essential document to the lawful ownership of vessels. *Jacobsen's Sea Laws*, 12, 13, and note. In the Danish law, it is used to denote the contract of bottomry. *Id.* 11.

BIEN. Fr. and L. Fr. [Lat. *bene*.] Well; advisable. *Fait bien à prendre garde*; it is well [done] to take care. *Britt. c.* 80. *Paroles del bien estre*; words of well being; words of form; words not strictly necessary, but inserted in an instrument with reference to a possible contingency; words advisable to be used for greater security; words used *de bene esse*. * *Britt. c.* 39. See *De bien estre, De bene esse*.

Lawfully; in lawful form. *Le action bien gist*; the action well lies. *Freem.* 1. *Le challenge ne fuit bien pris*; the challenge was not well taken. *Dyer*, 38, (Fr. ed.) *Come bien luy list*; as he lawfully might do, as was lawful for him to do. *Yearb. M.* 8 Edw. III. 2.

BIENNIUM. Lat. [from *bis*, twice, and *annus*, a year.] In old English law. The space of two years. See *Cessavit per biennium*.

BIENS. Fr. [Lat. *bona*.] Goods. At common law, this term includes all chattels, as well real as personal. *Co. Litt.* 118 b. The phrase *biens et chateaux*, (goods and chattels,) however, occurs in the old books. *Yearb. P.* 7 Edw. III. 15. *T.* 11 Hen. VI. 10.

In the sense of the civilians and conti-

mental jurists, it comprehends not merely goods and chattels, but real estate. *Stary's Conf. Laws*, § 13, note. *Id.* § 375. See *Bona*.

BIGAMIA. L. Lat. [from *bis*, twice, and Gr. *γάμος*, marriage.] Bigamy. See *Bigamy*.

BIGAMUS. L. Lat. [See *Bigamia*.] In old English law. One who has been twice married, or has married more than one wife; a bigamist. Applied originally, in the canon law, to clerks or ecclesiastical persons, who were forbidden to marry a second time. See *Bigamy*. *Bigamus* is he that either hath married two or more wives, or that hath married a widow. 2 *Inst.* 273. *Bigamus, seu trigamus, &c. et qui diversis temporibus, et successivè, duas seu tres, &c. uxores habuit*; polygamus *qui duas vel plures simul duxit uxores*; a bigamist, or trigamist, &c. is he who, at different times and successively, has had two or three, &c. wives; a polygamist is he who has had two or more wives at the same time. 3 *Inst.* 88.

* * The statute 4 Edw. I. st. 3, c. 5, ordained, in affirmance of the canon law, that if any person married a widow, or married a second time after the death of the first wife, he should be deprived of the benefit of clergy, if he was convicted of any clergyable felony whatever. From this provision it received the name of the statute *De Bigamis*. 2 *Reeves' Hist. Eng. Law*, 142. Under this statute, where a prisoner demanded the benefit of the clergy, (to wit, his book,) *bigamy* might be, and frequently was objected as a counterplea, and was in this form:—"that he who demands the privilege of the clergy, was married to such a woman, at such a place, within such a diocese, and that she was dead, and that he hath married another woman within the same diocese, or within some other diocese, and so is *bigamus*." Or, if he had been but once married, then to say,—"that she whom he hath married is, or was a widow, that is the relic of such a one, &c.;" which pleas were tried by the bishop of the diocese where the marriages were alleged; and if so certified by the bishop, the prisoner lost the benefit of the clergy. *Termes de la Ley*, voc. *Bigamy*. By statute 1 Edw. VI. c. 12, § 16, bigamy was declared to be no longer an impediment to the claim of clergy. 4 *Bl. Com.* 163, note (b). See *Bigamy, Benefit of clergy*.

BIGAMY. [L. Lat. *bigamia*, from *bis*, twice, and Gr. *γάμος*, marriage.] In criminal law. The crime of marrying a second time during the life of the first wife or husband; or of having more wives or husbands than one at the same time. 4 *Bl. Com.* 163. 4 *Steph. Com.* 300. There are several excepted cases, however, in which a second marriage during the life of a former husband or wife, will not amount to bigamy. See 4 *Chitty's Bl. Com.* 164, 165, note. 4 *Steph. Com.* 301, 302. *Wharton's Am. Crim. Law*, 552—555.

In canon law. The offence of marrying two wives successively, one after the death of the other; or once marrying a widow. 4 *Bl. Com.* 163, note (b). 3 *Inst.* 88. See *Bigamus*.

* * The use of the word *bigamy* in its present sense, in criminal law, although well settled, is, as Blackstone observes, an obvious corruption of the meaning, *polygamy* being the proper name for the offence of having a plurality of wives [or husbands] at once. 4 *Bl. Com.* 163. 3 *Inst.* 88. *Co. Litt. Hargr. & B.* Note 48, lib. 2. 2 *Kent's Com.* 80, 81. See *Polygamy*. *Bigamy* was a term invented by the canonists to describe the offence, peculiar to their law, of being *twice* married. See *Bigamus*. Mr. Stephen, in his valuable Commentaries, questions the correctness of Blackstone's criticism, on the following ground: that "whatever the number of marriages that may have taken place, the substance of the charge always is, that having a lawful wife still living, the offender married a *second* time, any intervening marriage being wholly immaterial, and out of the case, so far as the prosecution is concerned." 4 *Steph. Com.* 300, note (n). But the learned commentator seems to have overlooked the point of Blackstone's objection, which is not that *bigamy* is incorrectly applied to cases where marriage has been contracted *more than twice*, but is addressed to the essential and well-understood meaning of the term, and may be more specifically stated in the following form: that *bigamy*, a term always employed in the canon law to denote the offence of marrying a second wife *after the death* of the first, or of marrying two or more wives *successively*, was not properly applied to an offence, the essence of which consists in marrying a second time *during the life* of the first wife or husband, or of having two or more wives or husbands *at the*

same time. This criticism of Blackstone turns upon something more than a question of mere etymological propriety, (between *bis*, *twice*, and *πάλι*, *many times*, or *more than twice*, in the composition of the respective terms,) and is fully borne out by the authority of Lord Coke, who expressly defines polygamy, in the very terms of the modern definition of *bigamy*, to be the having of several husbands or wives at the same time; (*polygamia est plurimum simul virorum uxorumve connubium*;) and goes on to show the difference between *bigamy* and *polygamy*, in the Latin passage given under *bigamus*, *supra*. 3 *Inst.* 88. The present improper use of the term *bigamy* seems to have grown up since the time of Coke, who makes no mention of *bigamy* in his very full enumeration of offences, recognised by the English criminal law. In Massachusetts, the term *polygamy* has been restored to its proper use and meaning, as contended for by Blackstone. *Rev. Stat.* (ed. 1836,) c. 180, § 2.

BIGLA. L. Lat. [Græco-barb *βίγλα*, from Lat. *vigilia*.] In old law. Watch; a watch. *Meursius. Spelman*.

BILAGÆ. L. Lat. In old law. By-laws. *Spelman*, voc. *Bellagines*. See *Bilagines, Laga*.

BILAGINES, Bellagines, Bilagæ. L. Lat. [from *by*, Sax. a dwelling, Goth. a town, and *lagen*, laws.] In old law. The laws of towns; laws made by the inhabitants of towns for their own government, (*leges quas villarum incolæ sibi constituerint observandas*); municipal laws; by-laws. *Spelman*, voc. *Bellagines*. See *By-Laws*.

This word is found in Gothic writers, by whom it is usually written *bellagines*, (q. v.) *Jornandes de Reb. Get.* c. 11, cited in *Spelman*.

BILANX, Bilancia. L. Lat. In old English law. A balance. *Pryn. Rec.* 196. *Towns. Pl.* 169. *Bilanciæ*; scales for weighing. *Reg. Orig.* 279 b.

De bilanciis deferendis (breve); a writ for carrying or removing public scales. The name of an old writ in the Register, directed to the collectors of customs in certain ports in England, commanding them to take their scales and weights to another port, for the purpose of weighing merchandise for exportation. *Id. ibid.*

BILINE. A word essentially English, used by Britton in the sense of collateral, (by-line, side line.) *En line biline*; in the collateral line. *Britt.* c. 119.

BILINGUIS. Lat. [from *bis*, twice, and *lingua*, a tongue.] Of a double language or tongue; that can speak two languages. A term applied in the old books, to a jury composed partly of Englishmen and partly of foreigners, which, by the English law, an alien party to a suit is, in certain cases, entitled to; more commonly called a jury *de medietate linguæ*. 3 *Bl. Com.* 360. 4 *Steph. Com.* 422. *Triatio bilinguis*; a trial by such a jury. *Molloy de Jur. Marit.* 448. See *De medietate linguæ*, *Half tongue*.

BILL. [L. Lat. *billa*; L. Fr. and Sax. *bille*; Græco-barb. *βίλλας*; Lat. *schedula*, *libellus*, *syngraphum*.] A formal statement or declaration of a thing in writing. This seems to be the radical meaning of the term, as the following definitions may illustrate:

A formal written statement of complaint to a court of justice; as a *bill*, simply so called, in old English practice; a *bill of privilege*, a *bill in equity*, and a *bill of indictment*.

A declaration by a court to its officers, in the nature of process; as the old *bill of Middlesex*.

A record or written statement of proceedings in an action; as a *bill of exceptions*.

A written statement of the terms of a contract, or specification of the items of a demand, or counter-demand; as a *bill of exchange*, a *bill single* and *penal*, a *bill of lading*, a *bill of sale*, a *bill of credit*, and a *bill of particulars*.

A draft of an act of the legislature before it becomes a law; a proposed or projected law. A draft of an act presented to the legislature, but not enacted. An *act* is the appropriate term for it, after it has been acted on by, and passed the legislature. *Lewis, C. J. 26 Penn. St. R.* 450.

A solemn and formal written declaration of popular rights and liberties, promulgated on certain extraordinary occasions; as the famous *Bill of Rights* in English history. See these varieties of the word defined, *infra*.

BILL, or ORIGINAL BILL. In old English practice. The ancient and most usual mode of commencing actions in the English Court of King's Bench. It was otherwise called a *plaint*, and was a written statement of the plaintiff's cause of action, always alleging a *trespass* as the ground of it; in order to enable the court to entertain the action. *Boote's Suit at Law*, 13, 14.

1 *Arch. Pr.* 337. 1 *Crompt. Pr.* Intro. lxxx, (xxxv). It resembled the modern *declaration*, which was probably copied from it, and is frequently termed on the record, the plaintiff's bill. See *Billa*. Actions commenced in this way, not being founded upon an original writ, were said to be *by bill*, or *by bill without writ*. See *Breve*, *Original writ*. Both modes of proceeding, by bill and by writ, are now abolished by the effect of the statute 2 Will. IV. c. 39, and a new method substituted. 3 *Steph. Com.* 404, 405, note (I).

BILLS OF CREDIT. In constitutional law. Promissory notes or bills issued by a state government, exclusively on the credit of the state, and intended to circulate through the community for its ordinary purposes as money redeemable at a future day, and for the payment of which the faith of the state is pledged. 4 *Peters' R.* 410, 431. 1 *Kent's Com.* 408.—Paper issued by the authority of a state, on the faith of the state, and designed to circulate as money. 11 *Peters' R.* 257. 1 *Kent's Com.* 408, note. See 13 *Howard's R.* 16, 17. 2 *Story on Const.* § 1364. The emission of these bills is prohibited by the constitution of the United States, Art. I. Sect. X.

It was said by Mr. Justice McLean, in *Briscoe v. The Bank of Kentucky*, (11 *Peters' R.* 257,) that "the definition of the term '*bills of credit*,' as used in the constitution, if not impracticable, will be found a work of no small difficulty." But see the opinion of the same judge in *Darrington v. State Bank of Alabama*, 13 *Howard's R.* 12, 16, 17. In a case in the Supreme Court of New-York, it was said that "all attempts to give a full, accurate and satisfactory definition of *bills of credit*, within the meaning of the constitution, have, thus far, failed." *Bronson, J. 6 Hill's R.* 33, 37.

The bills of a banking corporation, which has corporate property, are not *bills of credit*, within the meaning of the constitution, although the state which created the bank is the only stockholder, and pledges its faith for the ultimate redemption of the bills. 13 *Howard's R.* 12.

BILL IN EQUITY, or CHANCERY. In equity pleading. A complaint in writing, under oath, in the nature and style of a petition, addressed to the Chancellor, or judge or judges of a court of equity, setting forth all the facts and circumstances upon which the complaint is founded, and pray-

ing for such equitable relief, or for such decree as the party may conceive himself entitled to, or the court may deem proper to grant. It is the usual mode of instituting a suit in chancery, and consists of certain parts which are fully explained in the books on equity pleading. After the bill has been drawn, signed by the complainant, and his or her solicitor and counsel, and sworn to, it is left with the clerk or other proper officer of the court, to be filed, and this is what is termed *filing a bill* in equity. 3 *Bl. Com.* 442. See *Mitford's Eq. Pl.* (by Moulton, ed. 1849.) 7, 35—121, [33—101]. *Story's Eq. Pl.* §§ 7—48. 1 *Daniel's Chanc. Pr.* (by Perkins), 351—454. 1 *Barbour's Chanc. Pr.* 33—47.

There are many varieties of bills, such as *original bills*, *supplemental bills*, bills of *revivor*, *cross bills*, bills of *discovery*, of *interpleader*, of *review*, and others, which are explained at length in the authorities above referred to.

BILL OF ADVOCATION. In Scotch practice. A bill by which the judgment of an inferior court is appealed from, or brought under review of a superior. *Bell's Dict.*

BILL OF ATTAINDER. An act of the legislature, declaring the attainer of certain persons named in it. See *Attainder*.

BILL OF COSTS. In practice. A statement in writing, of the items composing the amount of the costs awarded a plaintiff or defendant in an action or other judicial proceeding; including a statement of the terms or times when the particular services were rendered, the nature of the services, and the sums respectively due therefor. See *Costs*.

BILL OF EXCEPTIONS. In practice. A formal statement in writing, of exceptions taken to the opinion, decision or direction of a judge delivered during the trial of a cause; setting forth the proceedings on the trial, the opinion or decision given, and the exception taken thereto; and sealed by the judge in testimony of its correctness. This bill is in the nature of an appeal; its object being to put the points decided upon record, in order to bring them up before the court in banc, or a superior court, for review after trial. 3 *Bl. Com.* 372. 3 *Steph. Com.* 615. Marshall, C. J. 5 *Peters' R.* 190. *Raymond on Bill of Exceptions*, (Law Library, New Series, vol. 46.) See 2 *Comstock's R.* 98.

In strictness, the bill of exceptions ought

to be engrossed and tendered to the judge during the course of the trial, or other proceeding out of which the exception arises, and to be *then* sealed. The usual (and, indeed, the invariable) practice, however, is, to reduce to writing the *substance* of the exception at the time it is taken, and it is then signed by the counsel on each side, and the bill itself is *afterwards* drawn up in form, and tendered to the judge to affix his seal. *Raym. Bill of Excep.* 33, 34. 2 *Tidd's Pr.* 862, 864. 1 *Arch. Pr.* 196, 210. See 15 *Howard's R.* 160. 16 *Id.* 14. 24 *Mississippi R.* 96. 6 *Ohio St. R.* 522. Bills of exceptions were first introduced by the statute of Westminster 2, c. 31. 3 *Bl. Com.* 372. 2 *Reeves' Hist. Eng. Law*, 188. And they have been constantly in use ever since. *Fleta*, lib. 6, c. 55, §§ 8, 9. *Yearb. M.* 7 Edw. III. 3, 47. H. 4 Hen. VI. 14. See *Bille*. In Florida, the statute of Westminster on this point is recognised as in force. 6 *Florida R.* 516.

BILL OF EXCHANGE. [*L. Lat. billa escambii, litera cambii, litera cambitoria; Fr. billet de change, lettre de change.*] A written order or request by one person to another, for the payment of money absolutely, and at all events. 3 *Kent's Com.* 74. *Bayley on Bills*, 1.—An open letter of request from one man to another, desiring him to pay a sum named therein to a third person, on his account. 2 *Bl. Com.* 466. 2 *Steph. Com.* 162. *Chitty on Bills*, 1.—An open letter of request addressed by one person to a second, desiring him to pay a sum of money to a third, or to any other to whom that third person may order it to be paid; or it may be payable to bearer. *Kyd on Bills*, 3. This last definition has been approved by Mr. Justice Story, as presenting the important feature of negotiability, which the other definitions omit. *Story on Bills*, § 3. In common speech, a bill is frequently called a *draft*. 2 *Bl. Com.* 467. See *Draft, Foreign bill of exchange, Inland bill of exchange, Check, Drawer, Drawee, Acceptor, Payee, Indorser, Indorsee, Holder*.

BILL OF HEALTH. In mercantile law. A certificate from the proper authorities, as to the state of *health* of a ship's company at the time of her leaving port, and the health of such port itself.* A certificate, properly authenticated, that the ship comes from a place where no contagious distemper prevails, and that none of the crew, at the time of her departure, were infected

with any such distemper. 1 *Marsh. on Ins.* 319, b. 1, ch. 8, § 4.

BILL OF INDICTMENT. In criminal law. A written accusation of one or more persons, of some crime or misdemeanor, preferred to, and presented upon oath by a grand jury. If the jury, on examination, find this accusation to be supported by evidence, they write upon it the words "a true bill," (anciently *billa vera*), and this is called *finding an indictment*. 4 *Bl. Com.* 302, 305, 306. 4 *Steph. Com.* 369—374. See *Indictment*.

BILL OF LADING. [L. Lat. *billa exonerationis, apocæ oneratoria, literæ recognitionis*; Fr. *connaissance, police de chargement*.] In mercantile law. A written memorandum or instrument, signed (usually in triplicate) by the master of a vessel, acknowledging the receipt of goods on board, and undertaking (with certain exceptions,) to carry and deliver them to the person to whom they are addressed, (the consignee,) or his order, in as good condition as when received, for a certain remuneration or freightage.* It is, in other words, a contract for the conveyance of goods in a general ship, and though signed by the master only, binds the owners also. 3 *Kent's Com.* 206, 207. *Abbott on Ship.* 319, *et seq.* *Angell on Carriers*, § 223. *Smith's Merc. Law*, 175.

BILL OF MIDDLESEX. In old practice. A form of civil process, peculiar to the English Court of King's Bench, and by which personal actions in that court were formerly commenced. It was originally always founded on a plaint or bill of trespass, filed, or supposed to be filed in court, (see *Bill*,) and was a kind of *capias* directed to the sheriff of the county of Middlesex, and commanding him to take the defendant and have him before the king at Westminster, on a day prefixed, to answer to the plaintiff of a plea of trespass. *Boote's Suit at Law*, 36—42. It was termed a bill of *Middlesex*, because the court out of which it was issued usually sat in that county. 3 *Bl. Com.* 285. Once, when the court sat at Oxford, it was termed a bill of Oxfordshire. *Trye's Jus. Filiz.* 101. 3 *Steph. Com.* 404, note (l). It was abolished by the statute 2 Will. IV. c. 39.

BILL OF MORTALITY. A written statement or account of the number of deaths which have occurred in a certain district during a given time. Usually

spoken of in the plural, as "bills of mortality." In some places, as in London, births as well as deaths are included.

BILL OF PARTICULARS. In practice. A written statement or specification of the particulars of the demand for which an action at law is brought, or of a defendant's set-off against such demand, (including dates, sums, and items in detail,) furnished by one of the parties to the other, either voluntarily, or in compliance with a judge's order for that purpose. 1 *Tidd's Pr.* 596—600. 2 *Arch. Pr.* 221. 1 *Burr. Pr.* 432—434.

BILL OF PRIVILEGE. In old English practice. A kind of process which formerly was the established method of proceeding against attorneys and officers of courts. 3 *Bl. Com.* 289. 2 *Arch. Pr.* 118, 119. In form, it was the same as a declaration in actions by bill, except that instead of concluding, "and therefore he brings his suit," it concluded with the words, "and therefore he prays relief." *Id.* 119.

BILL OF RIGHTS. In constitutional law. A formal and public declaration or assertion, in writing, of popular rights and liberties, usually expressed in the form of a statute, or promulgated on occasions of revolution, or the establishment of new forms of government, or new constitutions. The English statute of 1 W. & M. st. 2, c. 2, is denominated κατ' ἔξουδιν, the *Bill of Rights*. 1 *Bl. Com.* 128. Several of the United States have incorporated formal bills of rights into their constitutions. See 2 *Kent's Com.* 1—11.

BILL OF SALE. In conveyancing. A deed or writing under seal, evidencing the sale of personal property, and conveying the title to it.* An assignment, in writing, of chattels personal. 3 *Steph. Com.* 104.

An instrument by which, in particular, the property in ships and vessels is conveyed. It is the true and proper muniment of title to a ship, and one which the maritime courts of all nations will look for, and in their ordinary practice require. Sir Wm. Scott, (*The Sisters*), 5 *Rob. Adm. R.* 155, [142]. 3 *Kent's Com.* 130. See *Grand Bill of Sale*.

BILL SINGLE, and PENAL. A written engagement under seal, for the payment of money, either on demand, or at a future day, formerly in common use; the *penal* bill being framed with a penalty, and

the *single bill*, (which was the more usual form,) without. *Cro. Elis.* 548. *Whishaw*. Single bills are still in use in some of the United States, as in Virginia, Mississippi and Florida. But they have been, for the most part, superseded by the modern bills and notes, as penal bills have been by bonds or obligations. See *Single bill*.

BILL OF STORE. In English law. A kind of license, granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage, free of duty. *Cowell. McCulloch's Dict.* Act 3 & 4 Will. IV. c. 52.

BILL OF SUFFERANCE. In English law. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another, without paying custom. *Cowell*.

BILLA. L. Lat. In old practice and pleading. Bill; a bill. *Spelman. Dyer*, 51, (Fr. ed.) The same as *narratio*, (q. v.) 12 *Mod.* 399. See *Bill*.

BILLA CASSETUR, or QUOD BILLA CASSETUR. (That the bill be quashed.) In practice. The form of the judgment rendered for a defendant on a plea in abatement, where the proceeding is *by bill*, (that is, where the suit is commenced *by capias*, and not by original writ). 2 *Arch. Pr.* 4.

BILLA EXCAMBII, or ESCAMBII. L. Lat. A bill of exchange. See *Litera cambii*.

BILLA EXONERATIONIS. L. Lat. In old English law. A bill of lading. 5 *Mod.* 137.

BILLA VERA. L. Lat. (A true bill.) In old practice. The indorsement anciently made on a bill of indictment by a grand jury, when they found it sufficiently sustained by evidence. 4. *Bl. Com.* 306. *Doct. & Stud.* dial. 2, c. 54, p. 279. See *Indictment*.

BILLE. L. Fr. In old practice. Bill; a bill; a bill of exceptions. *Faitz bille, et nous l'ensealeromus*; make a bill, and we will seal it. *Yearb. M.* 7 Edw. III. 47. *Faits un bill de vostre exception, et nous voulons enseeler.* H. 4 Hen. VI. 14.

BILLET DE CHANGE. Fr. In French law. A billet or bill of exchange. Pothier distinguishes this from a proper bill of exchange, (*lettre de change*.) The *billet de change*, he says, is when the party with whom the contract is made is not at present prepared to give the bill of exchange

agreed on, and merely gives a *billet*, by which he engages hereafter to furnish one on the proper place. *Pothier de Change*, n. 4, cited in *Story on Bills*, § 2, note 1.

BILLETA, Billetus. L. Lat. In old English law. A bill or petition exhibited in parliament. *Cowell*.

BILLETTUM. L. Lat. In old English law and practice. A billet, bill or memorandum of the delivery of a writ, which the statute of Westminster 2, (c. 39,) allowed parties to require of the sheriff or under-sheriff to whom it was delivered. *Fleta*, lib. 2, c. 67, § 18. 2 *Inst.* 449, 451.

BILLO, Billio. L. Lat. In old English law. Bullion. *Mem. in Scacc. M.* 9 Edw. I. 2 *How. State Trials*, 118.

ΒΙΛΛΟΣ, ΒΙΛΛΟΣ. Græco-barb. A bill. *Spelman*, voc. *Billa*. Meursius doubts if this be not a corruption of the Gr. *βιβλος*, a book. But Spelman makes it to be a word framed from the Sax. *bill*. See *ΒΙΒΛΙΟΝ*.

BIND. [Lat. *ligare, obligare, tenere*.] Anciently, *tie*. See *Tie*. "Bind," "bound." Formal words in bonds. "Held and bound." See *Hold*.

BIPARTITE. Fr. and Eng. [from Lat. *bipartitus*, from *bis*, twice or double, and *partitus*, divided.] In conveyancing. Of two parts; divided in two. *Litt.* sect. 370. An indenture was formerly called *bipartite*, when there were (as was most commonly the case,) two parties, and two parts of the deed. *Co. Litt.* 229 a. *Shep. Touch.* 50. The word is now nearly obsolete, but *tripartite*, (of three parts,) and *quadripartite*, of four parts, (qq. v.) are still used.

BIPENNIS. Lat. In old Scotch law. A halbert; a pole-ax; a Jeddart staff. 1 *Pitc. Crim. Trials*, part 2, p. 20.

BIRLAWS, Burlaws, Byrlaws. [from Germ. *haur*, a countryman, and *law*.] In Scotch law. Laws made by country people or husbandmen, respecting rural affairs. *Skene in Reg. Maj.* lib. 4, c. 39, § 8. *Spelman*, voc. *Bellagines*. Supposed by Spelman to be the same with *by-laws*. See *Burlaws*.

BIRRETUM, Birretus. L. Lat. In old English practice. The cap or coif of a judge or serjeant at law. *Spelman*. A cap of linen or silk fitting close to the head, (*forma ipsius cranii*.) mentioned by Fortescue as always worn by the justices while sitting in the king's court, being the first and principal badge of distinction

with which serjeants at law were decorated at their creation. It was never laid aside, either by the justices or serjeants, so as entirely to uncover the head, even in the presence of royalty itself. *Fortesc. de Laud. LL. Angl. c. 50.*

BIS. Lat. Twice.

Bis petitum; a thing twice demanded. *Cro. Jac. 21.*

Bis idem exigi bona fides non patitur; et in satisfactionibus non permittitur amplius fieri quam semel factum est; good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once. *9 Co. 53.* A party is not allowed to receive more than one satisfaction for the same debt or demand. See *Bona fides non, &c.*

Nemo debet bis vexari pro eadem causa. No man ought to be twice vexed [troubled or harassed, as by a bailable suit,] for the same cause. *5 Co. 61. 1 Tidd's Pr. 174.*

BISACUTA. Lat. In old English law. An axe or bill. *Bract. fol. 144 b. Fleta, lib. 1, c. 31, § 7.*

BIS COCTUS. Lat. and L. Lat. In old English law. Twice baked. A term applied to that kind of bread called *simenel* or *symenel*. *Fleta, lib. 2, c. 9, § 1.* Hence the modern *biscuit*, or, as it is in Britton, *deux fois quit*. *Britt. c. 30.*

BISEXTUS. Lat. *Dig. 50. 16. 98.* See *Bissexus*.

BI-SCOT. In old English law. A fine imposed for not repairing banks, ditches and causeways. *Blount. Whishaw.*

BISHOP. [Lat. *episcopus*.] In English ecclesiastical law. The chief of the clergy within a diocese, subordinate to the archbishop of the province, to whom he is sworn to pay due obedience. *3 Steph. Com. 65*, and notes. He is styled the archbishop's *suffragan*, or assistant. *Id. 63*, note (i). *Co. Litt. 94 a. Hargr. Note 96.* In the common law he is generally called the *ordinary*. *1 Chitt. Bl. Com. 383*, note. His dignity is usually called a *see*, (*sedes*), and his church a cathedral. *3 Steph. Com. 65.*

BISHOPRIC. In ecclesiastical law. The diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. *1 Bl. Com. 337—382.*

BISSEXTILE. [Lat. *bissextilis*, from *bis*, twice, and *sextilis*, the sixth.] Leap year is so called because, in the Roman calendar, from which it is derived, the

sixth day before the calends of March (called *sexto calendas Martii*), was twice reckoned, viz. on the 24th and 25th of February, (or rather, the 24th was reckoned twice,) in every fourth year, making such year properly to consist of 366 days. *Cowell. Blount. 2 Bl. Com. 141.* The same object is now attained by adding a day at the end of the month of February. *Brande.*

By the statute *De anno bissextili*, 21 Hen. III. it was enacted that the increasing day (*dies excrecens*) in the leap year, and the day next before, shall be accounted but one day. *Fleta, lib. 6, c. 11, §§ 2, 3. Termes de la Ley.* This is still the law, and a similar provision has been expressly enacted in some of the United States. *1 N. Y. Rev. St. [606], 615, § 3.* In others, the English statute is still in force. *5 Indiana R. 196.* Bracton devotes a considerable space in his tract "On Essoins," to the explanation of the bissextile year, which he calls the greater (*annus major*), as distinguished from the lesser or usual year. *Bract. lib. 5, tr. 2, c. 13, fol. 359.*

BISSEXTUS. Lat. [from *bis*, twice, and *sextus*, sixth.] In old English law. The added, repeated or increasing day (*dies excrecens*), of a leap year; in the Roman calendar, the sixth day before the calends of March, twice computed. See *Brissonius*. It was made up of the odd hours and minutes over 365 days, which had been disregarded in the three preceding years, in addition to those of the fourth year, (*ex minutiis quatuor annorum*.) *Bract. fol. 359 b.*

BLACK ACRE and WHITE ACRE. Fictitious names applied to pieces of land, and used as examples in the old books. *Perk. c. 2, s. 136. Id. c. 4, s. 297.*

BLACK ACT. In English law. The statute of 9 Geo. I. c. 22; so called from the circumstance of its passage having been occasioned by some devastations committed near Waltham, in Hampshire, by persons in disguise, or with their faces blacked. *4 Bl. Com. 245.* Repealed by statute 7 & 8 Geo. IV. c. 27. *4 Steph. Com. 174* note (a).

BLACK ACTS. In Scotch law. The acts of the five James's, with those of Mary's reign, and of James VI. down to 1586 or 1587. So called from the circumstance of their being printed in the old black-letter, or, as Bell terms it, "the Saxon character." *Barringt. Obs. Stat. 186. Bell's Dict.*

BLACK BOOK OF THE ADMIRALTY. In English law. An ancient repository of admiralty law, containing, besides the laws of Oleron at large, a view of the crimes and offences cognizable in the admiralty; and also occasional ordinances and commentaries on matters of prize and maritime torts, injuries and contracts. It is generally agreed to have been originally compiled in the reign of Edward III., though it contains considerable additions of later periods. It has always been deemed of the highest authority in matters concerning the admiralty. Story, J. 2 *Galison's R.* 404. *Id.* 1 *Sumner's R.* 555. Kent, C. 16 *Johns. R.* 456. *Molloy de Jur. Mar.* 104.

BLACK BOOK OF THE EXCHEQUER. [L. Lat. *Liber Niger Scaccarii.*] In English law. An ancient book in the Exchequer, containing a miscellaneous collection of charters, treaties, conventions, the number of hides of land in several counties, escuages, and the like. It is commonly attributed to Gervase of Tilbury. 1 *Reeves' Hist. Eng. Law*, 220, note. The Red Book of the Exchequer (q. v.) is a record of similar character. *Id. ibid.*

BLACK BOOK OF HEREFORD. In English law. An old record, frequently referred to by Cowell and other early writers.

BLACK MAIL. A rent or tribute formerly paid by the poorer inhabitants of some of the northern counties of England to some powerful Scottish border chieftain (*potenti alicui Scoto limitaneo*;) in order to be protected from the depredations of the Scottish border thieves, rieviers or moss troopers. *Spelman.* Protection-rent, or protection money. *Scott's Minstrelsy of Scott. Border*, Introd. Sometimes paid to the rieviers themselves. *Ersk. Inst.* b. 4, tit. 4, § 64. *Bell's Dict.*

* * The word *mail*, in this compound, is derived by some from the Fr. *maille*, a link of mail, or small piece of money. There is better reason, however, for regarding it as a Scotch term, signifying a *rent*, or stated payment, which sense it has in the Scotch *burrow meals*, or *burrow-mealis*, (borough rents.) See *Burrow-mealis*. This makes the whole word synonymous with *black rent*, in which sense it is used in the old books. *Stat. 9 Edw. III.* c. 4. *Blount.* It was called *black mail* from its being generally paid in baser money or in provisions, (*cere vel opsoniis*;) instead of silver. *Spelman. Termes de la Ley.*

BLACK RENTS. [L. Lat. *redditus nigri.*] In old English law. Rents reserved in work, grain, provisions, or baser money, in contradistinction to those which were reserved in *white money or silver*; which were termed white rents, (*redditus albi*), or blanch farms. *Tomlins. Whishaw.* See *Blanch farms*.

BLADA, plur. of *Bladum*. L. Lat. [L. Fr. *bleds, blees, bleez.*] In old English law. Corn or grain growing, (*segetes in herba*); growing crops of grain. *Spelman. 2 Inst.* 81. *Glanv. lib.* 2, c. 3. *Bract. fol.* 96, 222 b, 223 b. *Blada nondum a solo separata*; crops not yet severed from the soil. *Id. fol.* 217 b. *Quare blada, et germina vinearum—conculcavit, &c.*; wherefore he trod down the crops and germins of vines, &c. *Reg. Orig.* 95. According to Lord Coke, *blada* is taken for all manner of corn or grain, or things annual, coming by the industry of man, as hemp, flax, &c. 2 *Inst.* 81. *Keilw.* 125.

Grain after it has been harvested, or severed from the soil, (*blada a solo separata.*) *Bract. fol.* 217 b. *Blada in garbis*; grain in swathes or straw. *Reg. Orig.* 94 b, 96. *Blada vel alia catalla*; grain or other chattels. *Mag. Cart.* 9 Hen. III. c. 19. See *Bladum*.

BLADARIUS. L. Lat. [from *blada* or *bladum*, qq. v.] In old English law. A corn-monger; a meal-man or corn-chandler; a bladier, or engrosser of corn or grain. *Blount. 2 Inst.* 81.

BLADIER. See *Bladarius*.

BLADUM, pl. *Blada*. L. Lat. [Sax. *blæd*; L. Fr. *bled, ble.*] In old English law. Corn or grain; especially a growing crop. *Spelman. Bract. fol.* 223 b, 300 b. *Quo blado inbladata fuerint*; with what grain they have been sown. *Fleta, lib.* 2, c. 41, § 1.

Grain cut, or harvested. *Una mensura bladi*; one measure of grain. *Magna Charta*, 9 Hen. III. c. 25. The plural *blada* (q. v.) is the more common form of this word.

BLAMED, *Blasmed*. L. Fr. Infamous. *LL. Gul. Cong.* ll. 16, 17.

BLANCH FERME, *Blanch fearme*, *Blanch firme*, *Blanch farm*. [L. Lat. *alla firma, firma blanca.*] In old English law. White farm, or white rent, (*redditus albus*); rent paid in silver and not in cattle. *Spelman, voc. Firma alba.* Rents reserved in silver, or white money, were anciently called *white rents*, *blanch farms*, *redditus*

albi; in contradistinction to rents reserved in work, grain, or baser money, which were called *redditus nigri*, or *black-mail*. 2 *Bl. Com.* 42. 2 *Inst.* 44. Lord Bacon calls them *blanch rents*. *Works*, iv. 132. See *Alba firma, Farm*.

BLANCH (or **BLENCH**) **HOLDING**. In Scotch law. A kind of tenure in which the vassal paid a small duty to the superior in full of all services, as an acknowledgment of his right, either in money, or in some other substance; as a penny money, a pair of gilt spurs, a pound of wax, or of pepper, &c., *nomine alba firmæ* (in the name of white farm.) *Ersk. Inst.* b. 2, tit. 4, § 7. *Bell's Dict. voc. Holdings*. Considered by Blackstone the same with the *blanch farms* of the English law. 2 *Bl. Com.* 42, note (d). See *Blanch ferme*.

BLANC, Blank. [L. Lat. *blanca*.] In old English law. A silver coin, of the value of 8d. coined in France by Henry V. in the eighth year of his reign; called *blanc* (*white*), to distinguish it from a gold coin called a *salut*, or *salus*, struck about the same time. *Spelman. Stow's Annals*, 586.

Money paid by weight, and not by tale. *Spelman. See Blancus*.

BLANCUS. L. Lat. [from Fr. *blanc*, white.] In old law and practice. White, as paper or parchment is, when there is no writing or other mark upon it; otherwise called *albus*. See *Album breve*. Hence the modern term *blank*.

Plain or smooth, as silver money that has no impression, or from which the impression has been worn.* *Solidi blanci*; blank or plain shillings. 3 *Mon. Ang.* 352. *Triginta lib. sterlingorum blancorum*; thirty pounds of blank sterling. 2 *Id.* 31. This was undoubtedly a kind of silver money that was paid by weight, and not by tale, or count, (*quod vel ad ponderis valorem persolutum est, vel non in pecuniis numeratis*.) *Spelman, voc. Blanca*. Whether *blancus* denotes that this money was uncoined, or that it was coined money worn smooth, does not clearly appear. The words *blanc* and *blank* occur in English dictionaries, in the sense of a piece of metal in the mint ready for coining. *Bailey's Dict.*

BLANK. [L. Lat. *blancus*.] A void space in writing; a part of a deed, record, or other instrument not written upon, or filled up. See *Blancus*.

BLANK BAR. In pleading. The old name of a plea in bar, put in in an action of trespass, to oblige the plaintiff to assign the

certain place where the trespass was committed; otherwise called *common bar*. *Cro. Jac.* 594. *Blount*. It was chiefly used by the practisers in the Common Bench. *Id.*

BLANK INDORSEMENT. The indorsement of a bill of exchange or promissory note, by merely writing the name of the indorser, without mentioning any person to whom the bill or note is to be paid; called *blank*, because a *blank* or space is left over it for the insertion of the name of the indorsee, or of any subsequent holder. Otherwise called an indorsement in *blank*. 3 *Kent's Com.* 89. *Story on Prom. Notes*, § 138. Lord Mansfield, 1 *W. Bl.* 297. See *Indorsement*.

BLASPHEMY. [Lat. *blasphemia*, from Gr. *βλασφημία*, evil speaking or reviling.] In criminal law. An offence against religion, either by denying the being or providence of God; or by contumelious reproaches of our Saviour Christ; or by profane scoffing at the holy scripture, or exposing it to contempt and ridicule; Christianity being part of the laws of England.* 4 *Bl. Com.* 59. 4 *Steph. Com.* 233, 234. 2 *Hume on Crimes*, 558. Blasphemy was made a capital offence by the 77th novel of Justinian, c. 1, § 2.

In the United States, also, the Christian religion is received as part of the common law, and to revile it publicly and blasphemously, or to blaspheme its author is an indictable offence. 8 *Johns. R.* 290. *Thacker's Crim. Cas.* 346. 11 *Serg. & Rawle*, 394. *Story, J.* 2 *Howard's R.* 127, 198. *Wharton's Am. Crim. Law*, 4, 536. 20 *Pick. R.* 206. *Shaw, C. J. Id.* 213.

The use of this word is, in modern law, exclusively confined to sacred subjects; but *blasphemia* and *blasphemare* were anciently used to signify the reviling by one person of another. *Nov.* 77, c. 1, § 1. *Spelman*.

BLED, Ble. L. Fr. [Lat. *bladum*.] In old English law. Corn or grain. *Litt. sect.* 68. *Bleds*, (pl.) *Yearb. M.* 3 Hen. VI. 14. *Blees*. T. 1 Edw. II. 8.

BLEMISSEMENT. L. Fr. In old English law. Blemishment; disparagement or degradation. *Yearb. M.* 5 Edw. III. 131.

Infringement; diminution. *Kelham*.

BLENCH, Blench Holding. See *Blanch holding*.

BLOCKADE. In international law. The investment of a seaport by a competent naval force, with the view of cutting off all communication of commerce.* 1 *Kent's*

Com. 144—146. A sort of circumvallation round a place, by which all foreign connexion and correspondence is, as far as human power can affect it, to be cut off. Sir Wm. Scott, (Vrow Judith,) 1 *Rob. Adm. R.* 126. It is not necessary, however, that the place should be invested by land as well as by sea, in order to constitute a legal blockade; and if a place be blockaded by sea only, it is no violation of belligerent rights for the neutral to carry on commerce with it by inland communications. 1 *Kent's Com.* 147.

BLOODWITA. L. Lat. [*Sax. blodwyte.*] In Saxon and old English law. An amercement for the shedding of blood. *Spelman.* Fleta uses the *Sax. blodwyte.* Lib. 1, c. 47, § 15. See *Bloodwit.*

BLOOD. [*Lat. sanguis; L. Fr. sanke.*] Kindred; relation by natural descent from a common ancestor; consanguinity. *Webster.* A person is said to be of the blood of another, when he is descended from, or collaterally related to him. See *infra.*

A person or persons so related; as the whole blood, the half blood, (qq. v.)

Blood, in American law, includes the half blood as well as the whole blood. 2 *Peters' R.* 58. A person is, with the most strict propriety of language, affirmed to be of the blood of another, who has any, however small a portion of the same blood, derived from a common ancestor. *Story, J. Id.* 87.

In the case last referred to, Mr. Justice Story observed, that the word *blood* was used in the same sense, in the English common law. There are passages, however, in which it seems to be used in the stricter sense, implying whole blood exclusively. See 2 *Chitt. Bl. Com.* 227. *Id.* 220, note. This was before the statute 3 & 4 Will IV. c. 106. 1 *Steph. Com.* 385, 387. See *Half blood, Whole blood.*

BLOODWIT, Blodwite, Blodwyte. [*L. Lat. blodwita, blotwyta; from Sax. blod, blood, and wite, an amercement.*] In Saxon law. An amercement for bloodshed, (*multa effusi sanguinis.*) *Spelman.* Called by Scotch writers *bludweit*, or *bludweit.* *Skene de Verb. Signif.* A customary fine paid as a composition and atonement for the shedding or drawing blood. *Cowell.* To have bloodwit, in old charters, was to have the privilege of taking cognizance of the crime, and of receiving the fines resulting from it. *Spelman, voc. Blodwita.*

A privilege or immunity from amerce-

ment for bloodshed. *Fleta*, lib. 1, c. 47, § 15.

BLOODY HAND. In forest law. The having the hands or other parts bloody, which, in a person caught trespassing in the forest against venison was one of the four kinds of circumstantial evidence of his having killed deer; although he was not found in the act of chasing or hunting. *Manwood. Cowell.* See *Backbear.* This corresponds with the Scotch phrase, *red hand.* *Blount.*

BOARDER. One who has food and lodging in another's family or house, for a stipulated price. A boarder at an inn or hotel is distinguished from a guest. 26 *Vermont R.* 316. 26 *Alabama R.* 371. A boarder is an inhabitant of the place, or townsman, who resides permanently at the inn or hotel. *Redfield, C. J.* 26 *Vermont R.* 343. See *Guest.*

BOAT, held not to be a ship or vessel. 5 *Mason's R.* 120, 232. A canal boat not a ship or vessel. 5 *Hill's (N. Y.) R.* 34.

In the civil law, a ship's boat (*scapha navis*,) was held not to pass by the sale of a ship with her tackle, (*cum instrumento.*) *Dig.* 33. 7. 29. *Id.* 21. 2. 44. See *Id.* 6. 1. 31.

BOC. *Sax.* A book, or writing; a deed or charter. *Boc land*, (q. v.); deed or charter land. *Land boc*; a writing for conveying land; a deed or charter; a land-book. See *Land boc.*

BOCERAS. *Sax.* A scribe, notary or chancellor among the Saxons. *Crabb's Hist. Eng. Law*, 28. 2 *Hickes' Thes.* 46. *Barringt. Obs.* 404, note [I].

BOC HORDE. *Sax.* [*quasi bookhoard.*] A place where books, writings or evidences were kept. *Cowell.*

BOC LAND. *Sax.* [*quasi book-land; L. Lat. terra libraria or hæreditaria.*] In Saxon law. Land held and conveyed by writing, *boc*, deed or charter; deed land, or charter land; so called to distinguish it from *folc land*, which was held without writing. *Spelman. Cowell.* 1 *Reeves' Hist. Eng. Law*, 5. 4 *Kent's Com.* 441, 442. Land severed from the folc land, and converted into an estate of perpetual inheritance.

According to Sir W. Blackstone, it was land held by deed under certain rents and services, and in effect differed nothing from the free socage lands. 2 *Bl. Com.* 90. And *Spelman*, in explaining the epithet *hæreditaria*, observes that it could neither be given away nor sold, but was to be left strictly to the heirs, (*nec dari licuit nec*

vedi, sed hæredibus relinquenda erat.) Later researches, however, have established the fact that *boe land* was in its nature *allodial*, and that the owner of it, unless fettered by some restriction imposed by those under whom he claimed, had the absolute power of alienation and disposition by gift and sale, and by will. *Somner's Gavelk.* 88, 89. *Allen's Royal Prerog.* 139, *et passim.* 1 *Spence's Chancery*, 20, 21. See *Folc land*.

BODIN IN FEIR OF WEIR. O. Sc. In old Scotch Law. In warlike array. 1 *Pitt. Crim. Trials*, part 1, p. 8.

BODMERIE, Bodemerie, Boddemerey. Belg. and Germ. Bottomry, (q. v.) *Locenienus de Jur. Mar.* lib. 2, c. 6, § 1.

BODY. See *Corpus*.

BODY OF A COUNTY. See *Corpus comitatus*.

BODY CORPORATE, (or INCORPORATE.) [L. Lat. *corpus incorporatum*.] A corporation; so called, because the persons composing it are made into a *body*. *Co. Litt.* 250 a. Said to be the most correct as well as the earliest name of a corporation in English law. *P. Cyclopædia*, voc. *Corporation*.

BODY POLITIC. A term applied to a corporation, which is usually designated as a *body corporate and politic*. A body to take in succession, framed by *policy*. *Co. Litt.* 250 a. Particularly applied, in the old books, to a corporation sole. *Litt.* sect. 413. *Termes de la Ley*, voc. *Corporation*, (*Bodies politic*.)

BOILLOURIE, Boilary, Bullary. L. Fr. and Eng. [L. Lat. *salina*.] In old English law. A salt-house or salt-pit, where salt is *boiled*. *Co. Litt.* 4 b. *Cro. Jac.* 150.

BOIS, Boys, Boyes. L. Fr. [L. Lat. *boscus*, q. v.] Wood. *Haut bois*; high wood. *Sub bois*; under-wood, or cop-pice. *Cowell*, voc. *Boscus*. *Perk.* c. 1, s. 116.

BOISTE. L. Fr. Box; a box. *Yearb.* M. 6 Edw. III. 28.

BOLTING. [from Sax. *bolt*, a house.] In English practice. A term formerly used in the English inns of court, but more particularly at Gray's Inn, signifying the private arguing of cases, as distinguished from *mooting*, which was a more formal and public mode of argument. *Cowell*. *Tomlins*. *Holthouse*.

BOMBARDA. L. Lat. [from *bombus*, Gr. *βασβος*, the sound of the discharge.] In

old law. A gun or cannon. *Spelman*. *Bombardius*; a gunner. *Towns. Pl.* 214.

BON. Fr. and L. Fr. [from Lat. *bonus*, *bonum*, q. v.] In old English law. Good; sufficient in law. *Le brefe fuit tenu bon*; the writ was held good. *Yearb.* P. 3 Hen. VI. 20.

BON. Fr. In old French law. A royal order or check on the treasury, invented by Francis I. *Bon pour mille livres*; good for a thousand livres. *Steph. Lect.* 387.

In modern law. The name of a clause (*bon pour*—; good for so much,) added to a cedula or promise, where it was not in the handwriting of the signer, containing the amount of the sum which he obliged himself to pay. *Poth. Oblig.* part 4, ch. 1, art. 2, § 1.

BONA. Lat. [pl. of *bonum*, good; from *beare*, to make happy, (*beatum facere*;) to benefit, (*prodesse*.)] *Dig.* 50. 16. 49.] In the civil law. Goods; property in general, including lands, (*prædia*.) *Dig.* 33. 2. 37. *Story's Const. Laws*, § 375. See *Dig.* 50. 16. 21, 39, 49.

BONA. Lat. [plur. of *bonum*, not used; Fr. *biens*.] In old English law. Goods; personal chattels; moveable property. A term still used in modern law, as in the phrase *nulla bona*, (q. v.) and others. Like *biens*, it is said to be a more comprehensive term than *goods*, as it comprehends chattels *real*, as well as personal. *Co. Litt.* 118 b.

Bona et catalla; goods and chattels. *Fleta*, lib. 2, c. 64, § 1. This expression includes all personal things that belong to a man. *Pollock*, C. B. 16 *Mees. & W.* 68. *Blada, pannos, armaturam et alia bona et catalla*; grain, cloths, armour and other goods and chattels. *Mem. in Scacc.* T. 20 Edw. I. *Bona et merchandize*; goods and merchandizes. *Fleta, ubi supra*.

BONA CONFISCATA. Lat. In the civil law. Confiscated goods. Goods forfeited for offences were so called, because they belonged to the *fiscus*, or imperial treasury. 1 *Bl. Com.* 299. See *Fiscus*.

BONA FELONUM. Lat. In English law. Goods of felons; the goods of one convicted of felony. 5 *Co.* 110.

BONA FORISFACTA. Lat. In English law. Forfeited goods. *Hale's Anal.* sect. viii.

BONA FUGITIVORUM. Lat. In English law. Goods of fugitives; the proper goods of him who flies for felony. 5 *Co.* 109 b.

BONA MOBILIA. Lat. In the civil law. Moveable goods or personal chattels, as distinguished from *bona immobilia*. See 1 *P. Wms.* 249—284.

BONA NOTABILIA. L. Lat. In English ecclesiastical law. Notable goods; goods worthy of notice, or of sufficient value to be taken into account.* Goods of a party deceased, amounting in value, at least to five pounds.—If all the goods of the deceased lie, at the time of his death, within the same diocese or jurisdiction, a probate before the ordinary, or an administration granted by him are the only proper ones. But if the deceased had *bona notabilia*, or chattels to the value of a hundred shillings in two distinct dioceses or jurisdictions, then the will must be proved or administration taken out before the metropolitan of the province, by way of special prerogative. 2 *Bl. Com.* 509. *Shep. Touch.* 499, 500, and note. 2 *Steph. Com.* 237, 238. 1 *Chitt. Gen. Pr.* 523.

BONA PERITURA. Lat. Perishable goods.

BONA UTLAGATORUM. Lat. In English law. Goods of outlaws. *Hale's Anal.* sect. viii.

BONA VACANTIA. Lat. [*vacantia*, from *vacare*, to be empty, to want.] In the civil and common law. Goods wanting an owner; goods without an owner, or in which no one claims a property. *Inst.* 2. 6. 4. *Cod.* 10. 10. These, by the general rule of the common law, belong to the first finder, with the exception of royal fish, shipwrecks, treasure trove, waifs and estrays, which in England are the property of the sovereign. *Hale's Anal.* sect. viii. 1 *Bl. Com.* 298. 2 *Steph. Com.* 553, 554.

BONA WAVIATA. L. Lat. In English law. Waived goods; goods stolen, and waived, that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 5 *Co.* 109 b. 1 *Bl. Com.* 298. See *Waviare*.

BONA FIDES. Lat. In the civil and common law. Good faith; honesty; sincerity. The opposite of *mala fides*, (q. v.) See *Bona fide*.

Equity, (*æquum et bonum*.) See *Brissonius*.

Bona fides non patitur ut bis idem exigatur. Good faith does not suffer the same thing to be demanded twice. *Dig.* 50. 17. 57. *Broom's Max.* [249.] note. *Bona fides exigit ut quod convenit fiat.* Good

faith demands that what is agreed upon shall be done. *Dig.* 19. 2. 21. See *Id.* 19. 1. 50. *Id.* 50. 8. 2. 13.

BONA FIDE. Lat. [abl. of *bona fides*, (q. v.) L. Fr. *en bonne foy*; Span. *con buena fe*.] In good faith; honestly, without fraud, collusion, or deceit; really, actually, without pretence; innocently, ignorantly, without knowledge or notice.

This very common term, with the less frequent *bonæ fidei*, and *bona fides* from which both are formed, are derived from the civil law. *Inst.* 2. 6. pr. 1, 2. *Id.* 2. 8. 2. *Id.* 2. 9. pr. 5, 6. *Dig.* 6. 2. 7. 11. *Calv. Lex. Brissonius.* See *Bonæ fidei*. A very early and prominent instance of its use in England occurs in King John's Magna Charta. *Quod hæc omnia supradicta bonæ fide et sine malo ingenio observantur*; that all these things aforesaid shall be observed in good faith and without evil design. *Mag. Cart. Johan.* ad fin. And see *Cart. Confirm.* 49 Hen. III.

BONA FIDE PURCHASER. A purchaser in good faith. See 2 *Kent's Com.* 512, et seq. 4 *Id.* 463, et seq. "A *bona fide* purchaser for a valuable consideration, without notice," is one who is the purchaser of the legal estate or title; and a purchaser of a mere equitable estate is not embraced in the definition. 24 *Mississippi R.* 208. *Yerger, J. Id.* 229.

BONÆ FIDEI. Lat. [gen. of *bona fides*, q. v.] In the civil law. Of good faith; in good faith. This is a more frequent form than *bonæ fide*, occurring in the phrases *bonæ fidei* actions, *bonæ fidei* contracts, *bonæ fidei* emptor, *bonæ fidei* possessor, (qq. v.)

BONÆ FIDEI ACTION. See *Actio bonæ fidei*.

BONÆ FIDEI CONTRACTS. Those contracts in which equity may interpose to correct inequalities, and to adjust all matters according to the plain intention of the parties. 1 *Kames' Equity*, 200.

BONÆ FIDEI EMPTOR. A purchaser in good faith. One who either was ignorant that the thing he bought belonged to another, or supposed that the seller had a right to sell it. *Dig.* 50. 16. 109. See *Id.* 6. 2. 7. 11.

BONÆ FIDEI POSSESSOR. A possessor in good faith. One who believes that no other person has a better right to the possession than himself. 1 *Mackeld. Civ. Law*, 244, § 234. *Bonæ fidei possessor in id tantum quod ad se pervenerit tenetur.*

A *bona fide* possessor is bound for that only which has come to him. 2 *Inst.* 285. See *Grot. de Jur. Bell.* lib. 2, c. 10, § 3, *et seq.*

BONÆ MEMORIÆ. L. Lat. Of good memory. *Bract.* fol. 14 b. Generally associated with the phrase *sanæ mentis*, (of sound mind.) *Id. ibid.*

BONA GESTURA. L. Lat. [*gestura*, from *gerere*, to bear.] In old English law. Good abearing, or good behaviour. *Jacob. Whishaw.* See *Abearing.*

BONA GRATIA. Lat. In the Roman law. By mutual consent; voluntarily. A term applied to a species of divorce where the parties separated by mutual consent; or where the parties renounced their marital engagements without assigning any cause, or upon mere pretexts. *Dig.* 24. 1. 62. *Id.* 40. 9. 14. 4. *Cod.* 5. 13. 16. *Nov.* 22, c. 4. *Tayl. Civ. Law*, 361, 362. *Calv. Lex.*

BONA PATRIA. L. Lat. In Scotch law. The good country; good men of the country; good neighbors. A name given to an assise or jury. *Skene de Verb. Signif.* citing *Reg. Maj.* lib. 1, c. si vero, 29. *Cowell.* *Whishaw.* See *Boni homines, Patria.*

BOND. [Lat. *obligatio, scriptum obligatorium.*] A deed or instrument under seal, by which a person binds or obliges [*obligat*] himself, his heirs, executors and administrators, to pay a certain sum of money to another. The party thus binding himself is called the *obligor*; the party to whom he is bound, the *obligee*; and the instrument itself an *obligation* or writing obligatory. There is a *condition* usually, (and indeed in practice, invariably) added to the bond, that if the obligor does some particular act, the obligation shall be void, or else shall remain in full force.* 2 *Bl. Com.* 340. 2 *Steph. Com.* 157. The sum mentioned in the obligatory part of the bond is termed the *penalty*, and is usually fixed at some high amount, much more than sufficient to cover any possible damage arising from non-observance of the condition. 2 *Steph. Com. ub. sup.* In money bonds, it is always fixed at double the amount intended to be secured.

All the definitions in the books describe a bond as a deed, or instrument *under seal*, and *sealing* has always been held to be a necessary requisite to its validity. *Com. Dig.* Obligation, (A.) *Fait*, (A. 2.) *Kent*, C. J. 5 *Johns. R.* 239, 244. The term *bond*, *ex vi termini*, imports a *sealed instrument*.

Harper, 434. *Cowen, J.* 3 *Hill's* (N. Y.) *R.* 212. 2 *Serg. & R.* 502. 6 *Vermont R.* 90. 1 *Blackf. R.* 241. *U. S. Digest*, Bond, I. But a bond without a seal has been held good by the Supreme Court of the United States. 15 *Peters' R.* 290, 315.

BOND. [L. Lat. *bondus.*] In old Scotch law. A bond-man; a slave. *Skene de Verb. Sign. voc. Bondagium.*

To BOND. To give bond for, as for duties on goods; to secure payment of duties, by giving bond. *Bonded*; secured by bond. Bonded goods are those for the duties on which, bonds are given. See *Andrews on the Revenue Laws*, chap. 5.

BONDAGIUM. L. Lat. In old Scotch law. Bondage; villeinage; slavery or servitude. *Skene de Verb. Sign.* *Skene* quotes the Quoniam Attachiamentorum, (c. de brevibus, 31, 15,) for a curious species of bondage by the forelock, (*bondagium per anteriores crines capitis*,) which is "quhen ony freeman renuncis his libertie, and makis himself ane bond or slave to ane great man in his courte, and makis tradition and delivering of himselfe be giving ane grip of the haire of his forehead."

BOND TENANTS. In English law. Copyholders and customary tenants are sometimes so called. 2 *Bl. Com.* 148.

BONDI. L. Lat. In old Scotch law. Bondmen or villeins. *Reg. Majest.* lib. 2, c. consequenter, 13.

BONE GREE, *Bon gree.* L. Fr. In old English law. Good will; accord; consent. *De son bone gree*; freely, of his own accord. *Rot. Parl.* 4 Hen. IV. See *Dyer*, 49, (Fr. ed.) *Bon gree ou mal gree*; with the consent, or against the consent. *Britt.* c. 41. See *Gree.*

BONES GENTS. L. Fr. In old English law. Good men (of the jury); persons qualified to act as jurors. *Mirr.* c. 1, § 3. 9 *Co. pref.* *Sil eit retourne bones gents, &c. et sil est retourne altres, vostre challenge est à les testes*; if he have returned good men, &c. and if he have returned others, your challenge is to the polls. *Yearb.* T. 5 Edw. III. 21.

BONI HOMINES. L. Lat. [L. Fr. *bones gents, notables.*] In old European law. Good men; a name given, in early European jurisprudence, to the tenants of the lord, who judged each other in the lord's courts. 3 *Bl. Com.* 349. Blackstone, speaking of the origin of juries, says that all the nations which adopted the feudal system, as Germany, France and

Italy, had a tribunal composed of twelve good men and true (*boni homines*.) usually the vassals or tenants of the lord, being the equals or peers of the parties litigant. *Id. ibid. Esprit des Loix*, liv. 30, c. 18. This term has survived in the courts, to the present day. See *Good men*.

Boni judicis est ampliari jurisdictionem. It is the part of a good judge to enlarge (or use liberally) his remedial authority. *Chanc. Prec.* 329. Wright, J. 1 *Wils.* 284. Wilmot, C. J. 2 *Id.* 350. Nares, J. 2 *W. Bl.* 746. 2 *Florida R.* 593. It is the duty of a court to enlarge the legal remedy, if necessary, (without usurping jurisdiction,) in order to attain the justice of the case. *Broom's Max.* 36. It is the duty of a judge, when requisite, to extend the limits of his jurisdiction. *Id.* [56.] 9 *Mees. & W.* 818. According to Lord Mansfield, the true text of this maxim is *Boni judicis est ampliari justitiam*. 1 *Burr.* 304. See *Ampliari*.

Boni judicis est judicium sine dilatione mandare executioni. It is the duty of a good judge to cause judgment to be executed without delay. *Co. Litt.* 289.

Boni judicis est lites dirimere. It is the duty of a good judge to put an end or stop to lawsuits; [to discourage litigation]. 4 *Co.* 15. **Boni judicis est lites dirimere, ne lis ex lite oriatur.** It is the duty of a good judge to put an end to litigation, that suit may not grow out of suit. 5 *Co.* 31 a. **Boni judicis est causas litium dirimere.** It is the duty of a good judge to remove the causes of litigation. 2 *Inst.* 304. Legal remedies should be so applied as at once to put an end to the grievance complained of, without giving occasion to new suits for the same matter.

BONIS CEDERE. Lat. In the civil law. To make a transfer or surrender of property, as a debtor did to his creditors. *Cod.* 7. 71.

BONO ET MALO. See *De bono et malo*.

BONORUM CESSIO. See *Cessio bonorum*.

BONORUM POSSESSIO. Lat. In the civil law. Possession of goods; called in Greek (*επαρρησια διαδοχη*), praetorian succession. The right of pursuing and retaining the property of a person deceased, (*jus persequendi retinendique patrimonii, sive rei, quæ cujusque, quum moritur, fuit*.) not strictly due by the civil law, but granted by the praetor from a principle of

equity. *Dig.* 37. 1. 3. 2. *Inst.* 3. 9. [10.] *Cooper's Notes, in loc. Heinec. Elem. Jur. Civ. lib.* 3, tit. 10, §§ 714, 715. *Halifax Anal.* b. 2, c. 11, n. 1. A species of succession resembling the modern right of administration. *Id.* n. 8.

BONUM. Lat. Goodness; virtue. This word is constantly associated with *æquum*, as in the phrase *ex æquo et bono*, (q. v.); though it is not always distinguished from it in signification. For its meaning in the civil law, see *Brissonius*.

A good; an advantage or benefit. See *infra*.

Bonum defendentis ex integra causa; malum ex quolibet defectu. The success of a defendant depends on a perfect case; his loss arises from some defect. 11 *Co.* 68.

Bonum necessarium extra terminos necessitatis non est bonum. A good thing required by necessity is not good beyond the limits of such necessity. *Hob.* 144. A maxim applied to *commendams* in certain cases.

BONUS. Lat. In old English law. Good; good in law; unexceptionable. *Bonus homo*; a good man. The same with *probus homo*, (q. v.) But the word more commonly occurs in the plural. *Boni homines*, (q. v.) good men. *Boni summonitores*; good summoners. *Fleta*, lib. 4, c. 5, § 10.

Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert. A good judge judges (or decides) according to equity and virtue, and prefers equity to strict law. *Co. Litt.* 24 b. Buller, J. 4 *Term R.* 344. *Broom's Max.* 37, [57.]

BONUS VIR. Lat. In the civil law. A good man; an honest, upright man; a man of integrity. *Brissonius*.

BONUS. A premium given for a loan. "A definite sum to be paid at one time, for a loan of money for a specified period, distinct from and independently of the interest." 24 *Connecticut R.* 147.

A premium paid for a charter or other privilege granted to a company. *Webster*.

BOOK. [from Sax. *boc*, (q. v.); Lat. *liber*, or more properly, *codex*.] Any printed literary composition, though contained in a single sheet of paper. See *Clementi v. Golding*, 2 *Campb.* 25. Lord Ellenborough, *Id.* 30. *Hime v. Dale*, *Id.* 27, note (b). 1 *W. Bl.* 121, note.

A printed composition bound, that is, consisting of several printed sheets of paper folded and bound together; a volume. A

collection of printed sheets put together so as to form leaves and pages of a uniform shape and size. Hence the expression "book form." This is the general and popular meaning of the word.

A collection of sheets bound together, in book form, containing manuscript entries. Of this description are the *account books* of merchants, minute books of courts, &c.

A collection of blank sheets bound together, in book form, and intended to contain manuscript entries. The *blank books* of stationers belong to this class.

In practice, the name of *book* is given to several of the more important papers prepared in the progress of a cause, though entirely written, and not at all in the book form; such as demurrer-books, error-books, paper-books, &c. See the argument of Erskine, for the plaintiff, in *Hime v. Dale*, 2 *Camp.* 27—29, note (b). These, however, are now frequently printed.

In the Roman law, the word *liber*, generally translated "book," signified a collection of manuscript sheets fastened together, and rolled up so as to form a *volume*, (*volumen*). Hence *liber* and *volumen* meant the same thing. *Dig.* 32. 52. A composition folded in the rectangular form of our "books," was called *codex*. See *Codex, Liber, Volumen*.

BOOK OF ACTS. A term applied to the records of a Surrogate's Court. 8 *East*, 187.

BOOKS OF ADJOURNAL. In Scotch practice. The original records of criminal trials. See *Adjournal*. 1 *Brown's R.* 4.

BOOK OF ASSISES. See *Liber Assisarum*.

BOOK OF FIEFS. [*Lat. Liber Feudorum.*] Properly **BOOKS OF FIEFS**, (*Feudorum Libri*, (q. v.) 3 *Kent's Com.* 496, note.

BOOK OF RATES. In English law. A table or tariff of duties or customs, sanctioned by the authority of parliament. 1 *Chitt. Bl. Com.* 316, and note.

BOOK CASES. Adjudged cases, reported and printed in the books, as distinguished from records and precedents. *Jones, J.* 2 *Show.* 278.

BOOK LAND. See *Boc land*.

BOON DAYS. In English law. A certain number of days in the year, in which the tenants of copy-hold lords performed base or corporal services for their lord; such as reaping or carrying his corn, tiling his houses, or thatching his barn,

or ploughing his lands, &c. *Whishaw, Holthouse*.

BOOT. An old form of *BOTE*, (q. v.) "Fier-boot, cart-boot, and plow-boot." *Brownl. & Goldsb.* 170.

BROOTING or BOTING CORN. Certain rent corn, anciently so called. *Cowell, Blount*.

BORD. Sax. A house or cottage; a table. *Kennett's Par. Ant. Spelman, voc. Bordarii*.

BORDAGE. [*L. Lat. bordagium*, from Sax. *bord*, a house, cottage or table.] In old English law. A species of base tenure, by which certain lands, (termed *bord lands*), were anciently held in England, the tenants being termed *bordarii*. *Cowell, voc. Bordagium. Blount. See Bordarii, Bordlands*.

BORDARII, Bordimanni. *L. Lat.* [*L. Fr. bordier*; from Sax. *bord*, or *Fr. borde*, a house or cottage; a table.] In old English law. Bordmen; bordars, or cottagers. One of the classes of tenants or agricultural occupiers of land, mentioned in the Domesday Survey, and, with the exception of the *villani*, the largest. *Domesd. Titt. Norf. Middlesex, Gloucest. Huntingdon.* The origin of their name, and the exact nature of their tenure have been variously interpreted.

Lord Coke, who makes the word of French origin, (*Fr. borde*, a cottage,) defines *bordarii* to be "boors or husbandmen, (*bores*,) holding a little house, with some land of husbandry, bigger than a cottage." *Co. Litt.* 5 b. According to others, they were cottagers merely. But *Spelman* remarks on this, that they are often found in Domesday, as cultivating more land than the proper allotment of a *tugurium*, or cottage; and hence Lord Coke has properly explained their houses to be bigger than a cottage. According to *Spelman*, the most probable derivation of the term *bordarii* is either from Sax. *bord*, a table, as denoting those who cultivated the lands which the lord kept for the particular maintenance of his *table*, (termed *bord lands*, q. v.) or who supplied the lord with small provisions for his table; or from Sax. *bord*, a house, as denoting those tenants who performed servile offices about the lord's house, (*domestica navantes servitia*), such as grinding corn, bringing in wood, drawing water, &c.; villeins being, according to *Spelman*, occupied in agricultural labors in the fields, (*villæ et agris ad-*

dicti, rem colonicam exercebant.) According to Bishop Kennett, the *bordarii* were distinct from the *servi* and *villani*, and seem to be those of a less servile condition, who had a *bord* or cottage, with a small parcel of land allowed to them, on condition they should supply the lord with poultry and eggs, and other small provisions for his *board* and entertainment. *Kennett's Gloss. Paroch. Ant.* From various passages of Domesday, their condition appears to have been considerably above that of villenage, and Sir Henry Spelman seems inclined to the belief that they were actually freemen, though holding by base services.

BORDEARE. L. Lat. [from *borda*, a club.] In old English law. To joust or joust; to take part in a tournament. *Barringt. Obs. Stat.* 220.

BORDHALFPENNY. *Bordhalpenny.* [from Sax. *bord*, a table.] In old English law. Money paid at fairs and markets, for the privilege of setting up tables, *boards* and stalls for the sale of wares. *Spelman. Cowell. Blount.*

BORDIMANNI. L. Lat. In old English law. Bordmen. *Spelman*, voc. *Bordarii*. Sometimes erroneously written *borduanni*. *Co. Litt.* 5 b. *Blount.* See *Bordarii*.

BORDLANDS. [from Sax. *bord*, a table.] In old English law. The demesne lands which lords reserved for the maintenance of their board (*bord*), or table; (*quod quis habet ad mensam suam.*) *Bract. fol.* 263. *Spelman*, voc. *Bordarii*. *Cowell.* See *Demesne lands*.

BORDLODE. [from Sax. *bord*, a house.] In old English law. The quantity of food or provisions (otherwise called *ferm*), which the *bordarii* or bordmen paid for their *bordland*. *Cowell.*

BORDSERVICE. A tenure of *bordlands*. *Blount.* See *Bordage*.

BORG. *Borh, Borgh, Borhoe.* Sax. and O. Sc. In Saxon law. A pledge, pledge-giver, or surety, (Lat. *vas*, *fidejussor*.) The name given among the Saxons, to the head of each family composing a tithing or decennary, each being the pledge for the good conduct of the others. *LL. Edw. Conf.* c. 32. *Spelman*, voc. *Borsholder, Burghbrech.* The word *bor* continues to be used at the present day, in some parts of England, as in Norfolk, where it is employed as a common term of address by one person to another, in the sense of friend, neighbour, or companion.

Knight's P. Magazine, 1846, vol. 2, p. 103.

The word *borg*, or *borh*, also anciently denoted not only the pledge-giver, but the pledge itself so given, (*fidejussio*, *plegium*.) *Spelman*, voc. *Burghbrech.* See *Friburg, Decennary, Tithing.*

In old Scotch law, to let lands to *borgh* (*dimittere terras ad plegium*), was to give possession of them (where the right of possession was controverted,) to the last lawful possessor, under pledge to restore the same to him who should be found to have the right. *Skene de Verb. Sign.* voc. *Plegius*.

BORGH OF HAMHALD. In old Scotch law. A pledge or surety given by the seller of goods to the buyer, to make the goods forthcoming as his own proper goods, and to warrant the same to him. *Skene de Verb. Sign.*

BORGHBRECH. *Burghbrech.* [Sax. *borhbryce*, *borgbryce*, *borhbrece*, *borhbriche*; from *borh*, or *borg*, a pledge, and *bryce*, a breach.] In Saxon law. Breach or violation of pledge, (*fidejussionis violatio*;) pledge-breach, (*plegii fractio*.) *Spelman.* The offence of violating the *borh*, or pledge given by the inhabitants of a tithing. See *Borg*.

BORGESMON. (otherwise *Friborgesman*.) Sax. [from *borg*, (q. v.) and *man*.] In Saxon law. The name given to the head of each family composing a tithing. *Gilb. C. Pleas*, Introduct. note. *Spelman*, voc. *Friborga*. See *Borg*.

BORGHIEALDER. See *Borhealder*. *Bracton* writes it *borghye aldere*. *Bract.* fol. 124 b.

BORHEALDER. *Borghealder, Borghiealder, Borgiealder, Borhoealder*, corrupted into *Borowholder*; **BORHESEALDER**, corrupted into *Borsholder*, and *Bursholder*. Sax. [from *borh*, a pledge, and *alder*, elder or chief; Lat. *senior*, *princeps*, *capitalis*.] In Saxon and old English law. The chief, head, or principal man of a *borg* or pledge, that is, a tithing, or decennary, (*fidejussionis princeps, decuriæ præfectus*;) a chief pledge, (*capitalis fidejussor, capitale plegium*.) *Spelman*, voc. *Borsholder. Termes de la Ley.* *Bract.* fol. 124 b. Called also *borough-head*, *borow-head*, or *head-borow*, (qq. v.) See *Borsholder, Decanus friborgi*.

BORHOE, (the same as *Borh*, or *Borg*.) Sax. A pledge. Corrupted into *borow*, *borough*, and *burrow*. *Spelman*, voc. *Borsholder*.

BOROUGH, *Borow, Burrough, Burgh.* [L. Lat. *burgus*; L. Fr. *burg, bourg, burgh.*] In English law. A word which has been variously defined; as

A town. *Co. Litt.* 108 b.

An ancient town. *Litt. sect.* 164. *Termes de la Ley.*

A town of note or importance; a walled or fortified town. *Cowell.* See *Burgus.*

A corporate town that is not a city. *Cowell.*

An ancient town, holden of the king or any other lord, which sends burgesses to parliament. *Co. Litt.* 109 a.

A town, whether corporate or not, that sends burgesses or members to parliament. 1 *Bl. Com.* 114, 115.

A city, or other town, that sends burgesses to parliament. 1 *Steph. Com.* 116.

A corporate town, or city, whether sending members to parliament, or not. *English Munic. Corp. Act*, 5 & 6 Will. IV. c. 76.

A town or place organized for local government. *P. Cyclopaedia.* See *Burgh, Burgus, Bourg, Town.*

In American law. An incorporated town or village.

* * As to the etymology of this word, two opinions have been maintained by English writers. Some derive it from the Sax. *burg, burh, byrg, byryg*, Fr. *burg*, Lat. *burgus*; a place fortified or defended by a wall, mound or other enclosure. *Termes de la Ley.* *Spelman*, voc. *Burgus.* *Cowell.* See *Burgus.* The present meaning of the German *burg* (a castle, fort, citadel,) favors this etymology. Others derive it from the Sax. *borh, borhoe*, a pledge, tithing or decennary. *Termes de la Ley.* *Cowell.* This opinion is supported by the derivation of the word *town*. 1 *Bl. Com.* 114, 115. See *Town.*

The signification of the term *borough* has undergone considerable fluctuation, as will appear from the definitions above given. The quality of *not being a city* is prominently claimed for a borough by some of the best authors. *Cowell.* *Blount.* *Stat. 2 Edw. III.* c. 3, cited *ibid.* *Lyndwode Prov.* cited in *Cowell.* According to Lord Coke, "every city is a burgh, but every burgh is not a city." *Co. Litt.* 109 a. The latter branch of this proposition implies that some boroughs are cities, which goes to modify the older definitions. The former (every city is a burgh,) is censured by Mr. Hargrave, as not being quite accurate, and he instances Westminster, which is a

borough not incorporate, and yet it is a city. *Co. Litt. Hargr.* Note 123, lib. 2. Again, it is said by Littleton that "every borough is a town, but not *é converso.*" *Litt. sect.* 171. The distinction between a borough (*burgus*), and a city is not sustained by Spelman, who enumerates, among the meanings of the word, a town and city both, and observes that the Anglo-Saxons undoubtedly called those places *burgh*, which others called *cities*. (*Proculdubio Saxones nostri burgos nuncuparunt quas alii urbes et civitates.*) *Spelman*, voc. *Burgus.* He adds that when the sees of bishops were prohibited by canon from being located elsewhere than in cities, the title of *city* was retained by those boroughs only which were distinguished by these erections (*civitates titulus apud cathedrales tantum burgos remanebat*;) and hence there came to be reckoned no more cities than there were bishoprics. *Spelman, ibid.* See *City.* In the Year Book, T. 9 Hen. VI. 19, the city of London itself is called an ancient borough, (*la cite de Londres est un anc' bourg.*) Borough may have been the generic name used in the old law, as including towns and cities. *Co. Litt.* 115 b. And yet boroughs are constantly mentioned in old statutes as distinct from both. *Et que nul city, borough, ne ville, &c.* *Stat. Westm.* 1, c. 6. The true explanation may be that the great boroughs in England were on a level with cities, but the smaller boroughs, constituting the majority, were clearly distinguished from them. See *Fleta*, lib. 1, c. 24, §§ 4, 6. As to the present use of the word, an eminent English writer, as we have seen, defines a borough to be "a city, or other town that sends burgesses to parliament." 1 *Steph. Com.* 116. And under the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, boroughs seem to be placed on the footing of cities in all respects, being divided into wards, and governed by a mayor, aldermen and council. 3 *Steph. Com.* 191, *et seq.* See 1 *Max. & Gr.* 1, note.

Another distinctive quality of a borough, in English law, is that of *sending burgesses* [or members] *to parliament.* *Co. Litt.* 109 a. This still continues to be the principal feature of a borough, and is accordingly retained in the best modern definitions. 1 *Bl. Com.* 114, 115. 1 *Steph. Com.* 116. It has not been regarded, however, in the Municipal Corporation Act already cited. *Id. ibid.* note (i). The term *borough* is used

in this act to signify a corporate town, [i. e. a town organized for local government,] whether sending representatives to parliament or not; a sense which Mr. Stephen considers a novel one. 3 *Steph. Com.* 191, note (e).

In American law, the word *borough* is, for the most part, disused. In some states, however, as in Pennsylvania and Connecticut, it is still commonly applied to incorporated towns or villages. 23 *Connecticut R.* 128. 24 *Id.* 299. In New-York, the term is unknown to the statute law, although, before the revolution, boroughs were frequently chartered. By royal charter of 16th April, 8 Will. III. the town of Westchester was made "a free *borough*, and town corporate," to be called "the borough and town of Westchester," to be governed by a mayor, aldermen and common council. 2 *Bolton's Hist. of Westchester*, 189.

BOROUGH. In Scotch law. A corporate body erected by the charter of the sovereign, consisting of the inhabitants of the territory erected into the borough. *Bell's Dict.*

BOROUGH ENGLISH, *Borow English, Burgh English.* [Sax. *borhoe engliše*, L. Fr. *burgh engloyse*.] A particular custom prevailing in certain ancient English boroughs and copyhold manors, by which land descended to the youngest son instead of the eldest, or, if the owner had no issue, to his youngest brother. *Glanv.* lib. 7, c. 3. *Litt.* sect. 165, 735. *Spelman*, voc. *Borow English. Termes de la Ley. Kitchen*, 102, cited *ibid.* *Cro. Jac.* 198. 1 *P. Wms.* 63. 2 *Bl. Com.* 83. 1 *Id.* 75. 1 *Crabb's Real Prop.* 593, § 749. It was so called because, as some hold, it was an English custom, as distinguished from those introduced by the Normans. 2 *Bl. Com.* 83. The reason given by Littleton for this custom is, because the youngest son, by reason of his tender age, is not so capable as the rest of his brethren to help himself. *Litt.* sect. 211. For other reasons, see 2 *Bl. Com. ub. supra.* Borough English and Borough French are both mentioned in some of the old books. *Yearb.* P. 1 Edw. III. 38.

* * The custom of borough English still prevails in several cities, and ancient boroughs, and districts of smaller or larger extent, adjoining to them in different parts of the kingdom. The land is held in socage, but, according to the custom, it descends to the youngest son, in exclusion of all the

other children of the person dying seised. In some places, this peculiar rule of descent is confined to the case of children; in others, the custom extends to brothers and other male collaterals. *Third Real Property Report*, p. 8, cited in 1 *Steph. Com.* 199, note (n).

BOROUGH-HEAD, *Borow-head.* The chief man or head of a borough. *Cowell.* See *Head borough.*

BOROUGH-HOLDER, *Borow-holder.* See *Borhealder, Borsholder.*

BORROWE. Sc. In old Scotch law. A pledge. "Na burges dwelland in burgh sall harbourie onie strange man in his house, langer nor ane nicht, without *borrowes* and caution." *Skene de Verb. Sign.* voc. *Forensis.*

BORSHOLDER, *Bursholder.* [corrupted from the Sax. *borhesalder*, another form of *borhealder*, *borghsælder*, or *borhoealder*. *Spelman. Bract.* fol. 124 b. See *Borhealder*.] In English law. The head, chief or principal man of a *borh*, *borg*, borough, or tithing. 1 *Bl. Com.* 114, 355. *Finch's Law*, b. 4, c. 25. 3 *Steph. Com.* 47. *Wilcock on Constables*, Introd.

BOSCAGE. Eng. and Fr. [L. Lat. *boscagium*, from *boscus*, Ital. *bosco*, a wood.] In English law. The food which wood and trees yield to cattle; browse-wood, mast, &c. *Spelman*, voc. *Boscagium. Cowell.*

An ancient duty of wind-fallen wood in the forest. *Manwood.* See *Cabliish.*

BOSCOLUS. L. Lat. [dimin. of *boscus*, a wood, q. v.] In old records. A little wood. 2 *Mon. Angl.* 239, 242. *Towns. Pl.* 57.

BOSCUS. L. Lat. [Ital. *bosco*, Flem. *bosc*, from Gr. *βόσκω*, to feed; Fr. *bois*.] In old English law. Wood generally; all manner of wood. *Co. Litt.* 4 b. *Reg. Orig.* 1 b, 2. *Magna Charta*, 9 Hen. III. c. 21. *Id. Johan.* c. 31. 2 *Inst.* 36.

Wood growing; a wood, (*sylva*.) *Towns. Pl.* 23, 51, 195. *Stat. Merton*, c. 4. *Cart. de Forest.* 9 Hen. III. cc. 1, 2. It was divided into high wood, (Fr. *hautbois*;) or timber, (L. Lat. *mæremium*, *saltus*;) and underwood or coppice, (*sub-boscus*; Fr. *sub-bois*.) *Spelman*, voc. *Boscagium. Cowell. Blount.*

BOTE, *Bot, Boot.* Sax. [L. Lat. *bota*.] In Saxon law. A reparation, or making good of any damage done; (Lat. *emendatio, reformatio, restauratio*.) *Spelman. Circ bota, burg bota, brug bota*, (qq. v.); the reparation of a church, town, or bridge. *Ibid.*

A compensation, amends, or recompense. *Lamb. Explic.* cited in *Cowell*. A satisfaction or composition paid under the Saxon laws, in expiation of an offence. *Spelman. Skene de Verb. Sign. Cowell. Co. Litt.* 127 a. *Man bote, mæg bot, kins bot, frithes bot*, (qq. v.); satisfaction for the death of a vassal or kinsman, or for breach of the peace. *Spelman*.

In English law. An allowance; otherwise called *estover* or *estovers*, (qq. v.)

* * The word *bote* (sometimes written *boot*,) is of frequent occurrence in ancient English law, but usually in combination with other words, as above. It is still retained in English and American jurisprudence, as a component of the words *housebote*, *ploughbote*, *cartbote*, *hedgebote* and *firebote*, partly in its ancient sense of *reparation* or replenishment, and partly in the secondary or general sense of a sufficient allowance; being synonymous with the word *estovers*.* *Co. Litt.* 41 b. Thus, *housebote* signifies an allowance of wood to a tenant for the purpose of repairing his house, (*in ædium refectionem*); *ploughbote* and *cartbote*, for making and repairing his instruments of husbandry; *haybote* or *hedgebote*, for repairing his hedges; and *firebote*, for maintaining or replenishing his fire. *Spelman. 2 Bl. Com.* 35. 1 *Steph. Com.* 241. See *Cartbote*, *Firebote*, *Haybote*, *Housebote*, *Ploughbote*.

BOTELESS. In old English law. Without amends; without the privilege of making satisfaction for a crime by a pecuniary payment; without relief or remedy, (*sine remedio*.) *Cowell. Blount*. This word (written *bootless*,) is still retained in ordinary language in the sense of vain, or fruitless. *Cowell*.

BOTHA. L. Lat. In old English law. A booth, stall, or tent to stand in, in fairs or markets. *Cowell. Blount*.

BOTHAGIUM. L. Lat. [from *botha*, q. v.] In old records. Boothage, or customary dues paid to the lord of the manor, for the pitching and standing of *booths* in a market or fair. *Kennett's Par. Ant.* 680, cited in *Cowell*.

BOTHNA, Buthna, Bothena. L. Lat. In old Scotch law. A park where cattle are fed and enclosed. *Skene de Verb. Sign. citing Reg. Majest.* lib. 4, c. si quis namos, 30.

BOTTILER. L. Fr. *Butler*. A son chiefe bottiler. *Yearb. H. 6 Edw. III.* 15.

BOTTOMAGE. L. Fr. *Bottomry*. *Ceo est bottomage, quant argent est borrow sur*

le keil del neif, et le neif oblige al payment de ceo, &c.; *bottomry* is when money is borrowed upon the keel of a ship, and the ship is bound to the payment of it, &c. *Latch*, 252. See *Bottomry*.

BOTTOMRY, Bottomary, Bottomra, Bottom-rhea. [Dutch *bonumrie*, *bodemry*; Germ. *bodmerri*; L. Fr. *bottomage*; Fr. *contrat a la grosse aventure*; Lat. *fenus nauticum*, *pecunia trajectitia*.] In maritime law. An agreement entered into by the owner of a ship, or [the master as] his agent, whereby, in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with interest, if the ship terminate her voyage successfully, and binds or hypothecates the ship for the performance of his contract. *Smith's Merc. Law*, 261. The instrument by which this is effected is usually in the shape of a bond, called a *bottomry bond*, which is in the nature of a mortgage of the vessel, and is defined by Mr. Justice Story to be "a contract for a loan of money on the bottom of the ship, at an extraordinary interest, upon maritime risks, to be borne by the lender, for a voyage, or for a definite period." 2 *Sumner's R.* 157, 186. *Smith's Merc. Law*, ub. sup. 3 *Kent's Com.* 354. The money is loaned upon the ship, or ship and accruing freight, at an extraordinary interest, the risks of the voyage being borne by the lender, and the bond covers the freight of the voyage, or during the limited time. 3 *Kent's Com.* 354. *U. S. Digest*, *Bottomry and Respondentia*. 2 *Cond. Rep. U. S.* 129, note. *Bottomry* is a contract of a peculiar character, differing essentially from an ordinary loan. 1 *Curtis' R.* 340, 349.

* * The term *bottomry* is thought to be of Dutch origin, (being termed in that language *bomerie*, *bodmerie*, *boddemerie*,) and to be derived from *boden*, or *bodem*, which in the same language signifies the bottom or keel of a ship. *P. Cyclopædia*. So *bodo*, or *bodun* signified, it is said, in old French and British, a bottom or depth. *Camden's Brit.* 149. *Loccenius de Jur. Mar.* lib. 2, c. 6, § 1. *Molloy de Jur. Marit.* 359. It seems sufficient, however, to derive it, as an English word, from the bottom of a vessel, which is now used by a common figure, (*pars pro toto*,) as *keel*, (*carina*,) was anciently, for the vessel itself. See *Bottomage*. In some of the books, the word appears in the singular form of *bottom-rhea*. 2 *Vern.* 269. *Id.* 595.

BOUCHE, Bouch. Fr. and L. Fr. Mouth. *Ne gist en le bouche*; it does not lie in the mouth; i. e. it is not for one to say. *Litt. sect. 58.* A phrase still used. *En bouch del lay gents*; in the mouth of the common people. *Cro. Jac. 700.* *Il port meate en son bouche*; it supports itself. *Dyer, 28, (Fr. ed.)* Said of a deed.

An allowance of provision. *Avoir bouche à court*; to have an allowance at court; to be in ordinary at court; to have meat and drink scot-free there. *Blount. Cowell. Munitions de bouche. Ord. Mar. liv. 3, tit. 8, art. 11.*

BOUGHT AND SOLD NOTES. Notes or memoranda of the purchase and sale of goods, made by the broker effecting it.* When a broker is employed to buy and sell goods, he is accustomed to give to the buyer a note of the sale, commonly called a *sold note*; and to the seller a like note, commonly called a *bought note*, in his own name, as agent of each, and thereby they are respectively bound, if he has not exceeded his authority. *Story on Agency, § 28.* See a form of bought and sold note, *9 Campb. 326.*

BOYAEYTHE, Βουλευτής. Gr. [from *βουλή*, q. v.] In the Roman law. A councillor; a senator. *Dig. 26. 5. 22.* A decurio; a member of the *curia*. *Nov. 38. Id. 70. Id. 101.*

BOYAH, Βουλή. Gr. In the Roman law. A senate; a council, (*consilium, curia*.) *Nov. 70, in tit. Nov. 101, per tot.*

BOYAEIE, Βόλησις. Gr. [from *βόλομαι*, I will.] In the Roman law. A will, (*voluntas*), a last will, or testament, (*ultima voluntas*.) *Dig. 48. 22. 16. Nov. 107.*

BOYAOMAI, Βόλομαι. Gr. I will. The emphatic word of wills, when written in Greek, under the Roman empire. *Dig. 28. 1. 29. Id. 31. 88. 15.*

BOUND. [L. Lat. *bunda*, q. v.] A limit, or enclosing line of lands. In the common phrase "metes and bounds," *metes* properly signify the angles, corners or turning points, and *bounds* the lines between; though practically little or no distinction is made between them. Webster distinguishes *bound* from *boundary*; defining the former to be a limit, and the latter a visible mark designating a limit; though he observes that they are also used synonymously. See *Metes and bounds*.

In American law, the word has been used in various senses. Sometimes to denote a limit, generally. *Act of Assembly of Pro-*

vince of Maryland, April, 1718, c. 18. Sometimes, to denote the lines between certain designated points. *Act of 1699.* See *2 Harr. & McH. R.* And sometimes to denote the points at the ends of the lines. See *Bound trees, Bounders.* In the Colony Laws of New Plymouth, A. D. 1682, the bounds between towns are required to be "a heap of stones, or a trench of six feet long and two feet wide." *Plymouth Col. Laws*, (ed. 1836,) p. 201.

BOUND BAILIFFS. In English law. Sheriff's officers are so called, from their being usually *bound* to the sheriff in an obligation with sureties, for the due execution of their office. *1 Bl. Com. 345, 346.*

BOUND, or BOUNDED TREE. In American law. A tree used as a bound of lands, particularly as a point or mark from which the boundary lines are drawn. In some early cases, bound-trees are distinguished from line-trees; the latter extending from one bound-tree to another. *1 Harr. & McH. R. 16.* And see *Id. 81, 262. 2 Id. 80, 81, 416.* "A bounded hickory;" "a bounded red oak." *Ibid.*

BOUNDARY. [Lat. *limes, terminus*.] A line or object indicating the limit or furthest extent of a tract of land or territory. A separating or dividing line between countries, states, districts of territory, or tracts of land; consisting sometimes wholly of one or more natural objects, as a river, a chain of lakes, &c.; sometimes of artificial erections, as a stone wall, fence, and the like; sometimes of an imaginary line drawn from one principal *terminus* to another, and indicated along its course by prominent natural or artificial objects standing or erected upon it at intervals; and sometimes of all these in combination. See *3 Kent's Com. 426—432*, and notes. *4 Id. 466*, and notes.

A line, or connected series of lines, going around a territory or tract of land, and enclosing it on all sides. A tract or country may be said to be bounded by a *single line* running in various directions from one point to another, so as to surround it; but it is more common to use the plural *boundaries* as descriptive of a *series of lines* of various lengths, traced out either by natural objects or by courses and distances, or both, running in various directions from one point to another; such *points* (sometimes called in surveys, *corners*, and anciently *butts*) being usually designated by some conspicuous object, as a rock, a tree, a

stake, a heap of stones, &c. See 1 *Jones' Law R.* 111. See a description of the boundaries of the State of New-York, as declared in the *Revised Statutes*, Part I. Chap. I. Tit. I.

BOUNDERS. In American law. Visible marks or objects at the ends of the lines drawn in surveys of land, showing the courses and distances. 1 *Harr. & McH.* 358, arg.

BOURG. Fr. In old French law. An assemblage of houses surrounded with walls; a fortified town or village. *Steph. Lect.* 118.

Originally, any aggregation of houses, from the greatest city to the smallest hamlet. *Id.*

A corporate town. *Id.*

BOURG. L. Fr. [L. Lat. *burgus*.] In old English law. A borough. *Yearb.* T. 9 Hen. VI. 19. See *Borough*.

BOURGEOIS. Fr. In old French law. The inhabitant of a *bourg*, (q. v.) *Steph. Lect.* 118.

A person entitled to the privileges of a municipal corporation; a burgess. *Id.*

BOURGEOISIE. Fr. In old French law. The citizens of a *bourg* (q. v.) spoken of collectively. *Steph. Lect.* 118.

In later law, the privilege or franchise of being a burgess; citizenship. *Id.*

BOURGESSOURS. See *Burgessours*.

BOUSSOLE. Fr. In French marine law. A compass. *Ord. Mar.* liv. 1, tit. 8, art. 3.

BOUT. Fr. An end; a butt; the end of a piece of land; a line limiting it at the end. *Bouts et côtés*; ends and sides; butts and bounds. *Guyot, Inst. Feod.* ch. 3, s. 1.

BOUTER. L. Fr. To put. *Bouter avant*; to put before; to produce or exhibit. *Yearb.* P. 2 Edw. II. 36, 37.

BOUWERYE, Bouwerie. Dutch. [from *bouw*, a farm.] In old New-York law. A farm; a farm on which the farmer's family resided. *Old Lease*, Sept. 7, 1646; 1 *O'Callaghan's New Netherlands*, Appendix, Q. 2 *Id.* 291, note.

BOUWMEESTER. Dutch. [from *bouw*, a farm, and *meester*, master.] In old New-York law. A farmer. 1 *O'Callaghan's New Neth.* Appendix, I.

BOVARIUS. L. Lat. [from *bos*, an ox.] In old English law. An ox-driver; a driver of an ox-team. *Fleta*, lib. 2, c. 85.

BOVATA (or BOVATUS) TERRÆ. L. Lat. [from *bos*, an ox; L. Fr. *bove de terre*.] In old English and Scotch law.

An oxgang, or oxgate (Sc. *oxengate*) of land; as much as an ox could till, or go over, (*bovis iter*.) *Co. Litt.* 5 a. *Reg. Orig.* 2. *Spelman. Thel. Dig.* lib. 8, c. 13. *Shep. Touch.* 93. *Skene de Verb. Sign.* An ancient measure of land, of uncertain quantity. See *Oxgang*. The Span. *huebras* is of similar import.

BOVET. L. Fr. In old English law. A bullock or steer. *Yearb.* M. 2 Edw. III. 19.

BOVILE. L. Lat. In old pleading. An ox-stall. *Freem.* 425.

BOYS, Bois. L. Fr. Wood. *Fet Assaver*, § 15.

BOZERO. Span. In Spanish law. An advocate; one who pleads the causes of others, or his own, before courts of justice, either as plaintiff or defendant. So called, because it is with his *voice* or *words* that he exercises his profession. *Las Partidas*, part 3, tit. 6, l. 1.

B. R. The initial letters of *Bancus Regis*, or *Bancus Regina*, the Latin name of the English Court of King's or Queen's Bench, frequently used in the old books and reports, to designate that court. The initials K. B. and Q. B. of the English words are now more commonly employed. See *Bancus Regis*, *Bancus Regina*.

BRACE DE LA MEER. L. Fr. In old English law. An arm of the sea. *Britt.* c. 33.

BRACEATORIUM. L. Lat. In old English law. A place for brewing ale. *Bract.* fol. 207 b. See *Brasitorium*.

BRACER. L. Fr. To brew. *Kelham. Braceresses*; brewers. *Britt.* c. 30.

BRACHIUM MARIS. L. Lat. An arm of the sea. See *Arm of the sea*.

BRACIARE. L. Lat. In old English law. To brew. *Braciandi*; of brewing. *Fleta*, lib. 2, c. 73, § 7. See *Brasiare*.

BRACIATRIX. L. Lat. [from *braciare*, q. v.] In old English law. A brewer; a female brewer. *Fleta*, lib. 2, c. 12, § 30. The business of brewing was ordinarily carried on by women. See *Barringt. Obs. Stat.* 54, and notes.

BRACINE. L. Fr. A brewing. *Yearb.* M. 8 Edw. III. 7.

BRACTEATOR. L. Lat. In old pleading. A gold-beater. *Towns. Pl.* 260.

BRACTON. A celebrated writer of the time of Henry III., whose treatise *De Legibus et Consuetudinibus Angliæ*, (of the laws and customs of England,) is the most complete and valuable of the productions of that age, on the subject of English juris-

prudence. This great work is divided into five books, and these into tracts (*tractatus*), and chapters; embracing the whole civil and criminal law and practice of the kingdom, as it existed at the time it was written. The author, Henry de Bracton, was one of the king's justices, and is said by some to have been chief justice, by others a justice in eyre. 1 *Spence's Chancery*, 119, and note (a). The work itself is supposed to have been written or completed about A. D. 1270. *Id. ibid.* note (b). 2 *Reeves' Hist. Eng. Law*, 90. It was first published in 1569, and a second edition in 1640; but neither of these is free from corruptions and imperfections of the text, which render the author's meaning occasionally obscure.

Bracton is called by Mr. Spence a doctor of the civil law, and is supposed to have been the same person with Henry de Bracton who delivered law lectures in the University of Oxford, towards the middle of the thirteenth century. 1 *Spence's Chancery*, *wb. sup.* His intimate acquaintance with the Roman law sufficiently appears from the frequent references to the Code, Institutes and Pandects, scattered through his work, (in addition to large extracts without reference,) and which have led some to suppose it to have been almost entirely compiled from these sources. It was this feature which, from an early period, detracted so much from Bracton's authority in the common law courts of England. Thus we find him cited in Plowden, "not as an author in the law, but as an ornament to discourse where he agrees with the law." Saunders, C. B. arg. *Plowd.* 357. Catlin, C. J. arg. *Id.* 358. This opinion included Glanville and Fleta, of whom it is said that they "were never taken for authors [authorities] in our law." 1 *Show.* 121, arg. In another case, Bracton and Glanville are called *actores non authores legis*. Periam, arg. 1 *Leon.* 82. But see *Vaugh.* 96, 141, 142, 201. In later times, the merits of Bracton were more adequately appreciated, and his authority acknowledged by eminent judges and writers, such as Staunford, Lord Bacon, Sir William Jones, Lord Holt and Selden. Lord Bacon quotes Bracton as "an author of great credit." Arg. case of the Postnati of Scotland, *Works*, iv. 358. Lord Coke himself made free use of Bracton in all his writings, and a large proportion of the Latin quotations with which the Institutes abound is taken from this source. Sir William Blackstone also

frequently refers to Bracton, and always in terms of peculiar respect. Bracton continues to be cited by the best writers on English and American law, and is sometimes quoted in argument in the English courts. 15 *Mees. & W.* 60.

Although most of the treatise *De Legibus et Consuetudinibus Angliæ* has necessarily become obsolete, it will probably never lose its interest as the most complete repository of ancient English jurisprudence, and a principal source of the learning of later times. 1 *Kent's Com.* 499—501. Indeed, of late years, the attention of English jurists, especially the civilians, has been drawn to it in a very particular manner. Mr. Long, in a "Discourse" delivered in Middle Temple Hall (and published in the Law Library, new series, vol. 44,) goes into an examination of a considerable part of "this comprehensive Institutional Treatise," as he terms it, and observes of it, (p. 106,) "this book is certainly the foundation of our system." Mr. Spence, in his valuable treatise on *The Equitable Jurisdiction of the Court of Chancery*, has made very copious use of it, in illustration of what may be considered his theory of the almost entire derivation of the English from the Roman law. Not a few portions of Bracton continue to be law in the United States at this day.

The great interest with which this venerable work is invested, arises from the circumstance of its having been written at the time when the common law was in process of formation. Bracton himself expressly speaks of the law as then *unwritten*, and made up of customs which often differed in different places. *Sola Anglia usa est in suis finibus, jure non scripto et consuetudine.* * * *Sunt in Anglia consuetudines plures et diversæ, secundum diversitatem locorum.* *Bract.* fol. 1. These discordant materials were, however, beginning to be amalgamated and reduced to uniformity, principally from the effect of the decisions of the King's courts, which are here referred to systematically for the first time. Nearly five hundred references are made to adjudged cases of this description, some of them before the King, others in the Bench, but most of them before the justices in eyre, especially before Martin de Pateshull, whose opinions seem to be regarded as of paramount authority.

This work of Bracton, like the older treatise of Glanville, and the productions of the

contemporary French writers Defontaines and Beaumanoir, is not only a treatise on the doctrines or *principles* of the law, but also, and to a very considerable extent, an exposition of the *mode of conducting actions* and other proceedings in the courts; or what would be called in modern times, a *book of practice*. It abounds in forms, especially of writs, which are given at length, with all the rules of procedure, and with such minuteness as prove the author to have been fully acquainted with the details of the subject.

The extent to which Bracton drew his materials from the civil law, is a question upon which very different opinions have been entertained, and which, from the important bearing recently given to it, upon the origin and composition of the common law itself, has assumed a high degree of interest. It was said by Mr. Reeves, (a very competent judge, as has always been supposed,) in his *History of the English Law*, that what Bracton took from the Roman law, "if put together, would perhaps not fill three whole pages of his book." 2 *Reeves' Hist. Eng. Law*, 88. This opinion has been warmly controverted by the English civilians, and particularly, of late, by Mr. Long and Mr. Spence, in the works already referred to, from whose representations the very opposite conclusion might be drawn, that the treatise *De Legibus et Consuetudinibus Angliæ* was little more, in substance, than a compilation of Roman jurisprudence, adapted to, and incorporating the English law and practice of the time. The assertion of Mr. Reeves may be safely questioned, without by any means admitting such a conclusion as this. The free use made by Bracton of the civil law at the very commencement of his treatise, (whole passages being given verbatim, and without any indication of the sources from which they are derived,) and the adoption, to some extent, of the arrangement of the Institutes, have undoubtedly imparted to the whole work very much of a Roman air and exterior; but a careful examination will show (it is believed) that it has been compiled essentially from other sources. Those portions in which the civil law has been either referred to, or used without reference, are principally confined to the first book, less than half of the second, and the first tract of the third, comprising together about one-eighth of the whole treatise; and much of the matter thus borrowed seems to have

been introduced rather for the purpose of filling up the outline of a great work, than of giving what was considered to be the settled law of England. Bracton's view of the Roman law probably resembled that of the compilers of the Books of Feuds or Fiefs, as expressed in *Feud. Lib. 2, tit. 1*. More will be said on this subject, under the heads of the *Common* and *Civil Law*.

The style of Bracton, when not obscured by corruptions of the text, is remarkably clear and simple, affording a complete contrast to the harsh and involved manner of writers far more modern, and admitting generally of very literal translation. His Latin is considered by Lord Bacon as much purer than that which was in use in England, after the time of Edward I. *Bac. Read. Uses*.

BRANDING. In criminal law. The punishment of marking convicted felons with a hot iron (in the shape of a letter or otherwise) on the hand or face. Burning in the hand (q. v.) on the allowance of clergy, was a species of branding. 4 *Bl. Com.* 368, 370.

BRANGWYN. Brit. A name (signifying a white crow,) given to the statute 4 Hen. IV. ch. 4. 10 *Co.* 113, Arthur Legat's case. *Barringt. Obs. Stat.* 348. See the explanation *ibid*.

BRASIARE, Braciare. L. Lat. [L. Fr. *bracer*; from *brasium*, malt.] In old English law. To brew. *Domesday. Blount.*

Brasiator, braciator; a maltster; a brewer. *Reg. Orig.* 280. *Spelman, voc. Brasium.*

Brasiatrix; a female brewer. *Cowell. Blount.* See *Braciatrix*.

Brasina, bracina; a brew-house. *Cowell. Blount.*

Brasitorium, braceatorium; a malt-house. *Towns. Pl.* 184.

BRASIUM, Braseum. L. Lat. [from Gr. *βράσω*, to boil.] In old English law. Malt. *Spelman. Reg. Orig.* 111, 127.

BRE'. An abbreviation of *Breve*. 1 *Instr. Cler.* 9.

BREACH. [Lat. *fractio, infractio, violatio*.] The breaking or violating of a law, right or duty, either by commission or omission. See *infra*.

The breaking, or forcible passing through, or over a material object. See *infra*.

BREACH OF CLOSE. The unlawful, or unwarrantable entry on another person's soil, land or close. 3 *Bl. Com.* 209,

210. See *Close, Quare clausum fregit, Trespass.*

BREACH OF COVENANT. The non-performance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holthouse.* 3 *Bl. Com.* 155, 156.

BREACH OF PEACE. The offence of breaking or disturbing the public peace by any riotous, forcible or unlawful proceeding. 4 *Bl. Com.* 142, *et seq.* 4 *Steph. Com.* 273, *et seq.*

BREACH OF POUND. The breaking any pound or place where cattle or goods distrained are deposited, in order to take them back. 3 *Bl. Com.* 146. See *Pound breach.*

BREACH OF PRISON. The offence of actually and forcibly breaking a prison or gaol, with intent to escape. 4 *Chitt. Bl. Com.* 130, notes. 4 *Steph. Com.* 255.

BREACH. In pleading. That part of the declaration immediately preceding the *ad damnum* clause, in which the violation of the defendant's contract is stated. 1 *Chitt. Pl.* 335, 374.

BREAKING. In the law of burglary. A substantial and forcible irruption, as by breaking or taking out the glass of a window, or otherwise opening it; picking a lock, or opening it with a key; lifting up the latch of a door, or unloosening any other fastening which the owner has provided. 4 *Bl. Com.* 266. 4 *Steph. Com.* 149, 150, and note (x), *ibid.* *Coze's R.* 439. And whatever would be a breaking of an outer door will also be a breaking open of an inner door, to constitute burglary. 2 *East's P. C.* 488.

There must, in general, be an actual breaking, and not a mere legal *clausum fregit*, (by leaping over invisible ideal boundaries, which may constitute a civil trespass;) and therefore an entry by an open door or window is, in itself, no burglary. 4 *Bl. Com.* 226. 7 *Dane's Abr.* 136. But there may be a breaking by implication, where there is a felonious entry; both breaking and entering being always essential to complete the offence of burglary. 4 *Bl. Com.* 226, 227. 1 *Russell on Crimes*, 786—794. *U. S. Digest*, Burglary. See *Entry*.

BREAKING A CASE. The expression by the judges of a court, to one another, of their views of a case, in order to ascertain how far they are agreed, and as preliminary to the formal delivery of their

opinions. "We are breaking the case, that we may show what is in doubt with any of us." Holt, C. J. addressing Dolbin, J. 1 *Show.* 423.

BRECCA. L. Lat. In old English law. A breach, or decay, or any other want of repair. *Pat.* 16. *Ric.* II. cited in *Cowell*.

BRED. An old English word used by Bracton, as part of the phrase *To lange and to bred*, which is very oddly translated by Cowell and others, *too long and too broad.* *Bract.* fol. 135. The context of the passage obviously requires quite a different interpretation. See *To lange and to bred.*

BREDWITE. Sax. [from *bred*, and *wite*, a fine or penalty.] In Saxon and old English law. A fine, penalty or amercement imposed for defaults in the assise of bread. *Kennett's Par. Ant.* 114. *Cowell*.

BREF. O. Fr. and L. Fr. A writ. *Fet Assaver*, per tot. See *Breve, Brief*.

BREHON. In old Irish law. A judge. 1 *Bl. Com.* 100. Brehons, (*breitheamhuin*;) judges.

BREHON LAW. [Irish, *breitha-neimeadh*.] The native system of law which prevailed in Ireland, before the conquest by Henry II. 1 *Bl. Com.* 100. *Co. Litt.* 141 a. For a particular view of this system, see *P. Cyclopædia*.

BREPHOTROPHI. Græco-Lat. [Gr. *βρεφοτρόφοι*, from *βρέφος*, an infant, and *τροφή*, a nurse.] In the civil law. Persons appointed to take charge of foundlings. *Cod.* 1. 3. in tit. *Id.* 1. 3. 46, §§ 1, 3.

BRESMIA, Bresmya. L. Lat. In old English law. Bream; a species of fish. *Fleta*, lib. 2, c. 73, § 20.

BRETOYSE, Bretois. Fr. Britons or Welshmen. *Lex de Bretoyse*; the law of the Welsh marches. *Blount. Cowell*.

BRETTWALDA. Sax. In Saxon law. The ruler of the Saxon heptarchy. *Steph. Lect.* 696.

BREVE, (plur. *Brevia*.) L. Lat. [Fr. *brief*; O. Fr. *bref*, *briefue*, *brieffe*; Scotch *brieve*; from Lat. *brevis*, brief, short.] In old English law. A writ; properly an original writ, (*breve originale*;) by which all actions in the superior courts of England were once required to be commenced. *Non potest quis sine brevi agere*; no man can sue without a writ. *Bract.* fol. 413 b, 112. *Fleta*, lib. 2, c. 13, § 4. *Steph. Pl.* 5, 6. 3 *Bl. Com.* 272, 273.

In a larger sense, any writ or precept of the king in writing, under seal, issuing out of any court, whereby he commands any

thing to be done for the furtherance of justice and good order; comprising what were called judicial as well as original writs. *Termes de la Ley. Blount.*

A commission to a judge or justice of the superior courts of England had, from an early period, the form of a *breve*, or writ, and was so called. *Bract. fol. 108 b, et seq. See Close writs.*

* * Bracton observes that a *breve* is so termed because it *briefly*, and in few words, sets forth the subject-matter of the action and the claim of the demandant; (*dicitur ideo breve, quia rem de qua agitur, et intentionem petentis paucis verbis breviter enarrat.*) *Bract. fols. 112, 413 b.* Thelwall describes a *breve* to be a formal letter or epistle of the king, written in Latin on parchment, sealed with his seal, directed to some judge, officer, minister or other subject, at the suit of the king himself, or at the complaint and suit of another subject, commanding or authorizing something contained in the said letter to be done, for the reason briefly expressed therein, which is to be the subject of judicial examination in some of the king's courts. *Thel. Dig. lib. 1, c. 1, ¶ 4.*

The term *breve* (Græco-barb. *βρεβιον*), occurs in the imperial and pontifical constitutions as early as the third century, in the same sense which Bracton gives it, viz. a brief or summary statement in writing, (*scriptum quod summam rei continet.*) *Spelman.* The *breve* of the English courts has been called a letter or epistle, because it commenced in the same way as the letters of the ancient Romans did:—*Titius Aulo suo, Salutem*; Titius to his friend Aulus, Greeting:—*Rex, justitiariis suis, &c., salutem*; The king to his justices, Greeting. Our own writs at the present day commence with the same epistolary phrase;—"The People, &c., to the sheriff, &c., Greeting." See *Epistola, Litteræ*. So a letter of attorney (*litteræ procuratoriæ*) was called in English, as old as Bracton's time, a "writ," (*breve*); and in law French, *breve d' attorney*. *Bract. fol. 40. Litt. R. 143.* The modern German brief has the same sense of letter, and this meaning seems to be of very high antiquity. *Hickes' Thes. Diss. Epist. in notis, p. 3. Steph. Pl. Appendix, Note (2). See Writ.*

The great repository of the old English *brevia* is that ancient compilation termed *Registrum Brevium*, the Register of Writs, and usually referred to in the books as

"The Register." See *Registrum Brevium*. The *brevia* are here arranged under two general heads, *originalia* and *judicialia*, comprising in the whole upwards of a thousand forms. They are individually named either from the subject-matter of them, or from one or more emphatic words of the forms themselves. In the former case, the preposition *de* is usually employed in designating the particular *breve*; thus, *breve de recto*, a writ of right; *breve de ingressu*, a writ of entry; *breve de convention*, a writ of covenant, &c. Most of these writs will be found in this dictionary, under the head of DE, with the proper addition in each case.

BREVE DE RECTO. L. Lat. [L. Fr. *brief de droit*, Sc. *briefe of richt*.] A writ of right. *Reg. Orig. 1. Bract. fol. 328.* So called because the words in the writ were, *quod sine dilatione plenum rectum teneas*, (that without delay you do full right); or because the subject-matter of the writ was the right (*rectum*) of property in lands. *Co. Litt. 115 a, 158 b. 3 Bl. Com. 191, 193. See Writ of right.*

BREVE ORIGINALE. L. Lat. An original writ; a writ which gave origin and commencement to a suit, (*quod actioni originem præstat*). *Bract. fol. 413 b. 1 Reeves' Hist. Eng. Law, 319. Stat. Marlebr. c. 30. See Breve, Original writ.*

BREVE JUDICIALE. L. Lat. A judicial writ; a writ issued in *judicio*, after a suit was commenced.* *Crabb's Hist. Eng. Law, 114. Bract. fol. 413 b.* Any other writ than an original writ.* See *Breve, Judicial writ.*

BREVE NOMINATUM. L. Lat. A writ in which the circumstances of the case (time, place and demand,) were particularly expressed, or *named*; as distinguished from the *breve innominatum*, which contained only a general complaint without particulars. *Gillb. C. Pleas, 3, and note.*

BREVE TESTATUM. Lat. In feudal law. A brief memorandum in writing, attested by witnesses, and used as evidence of feudal investiture. *Feud. Lib. 1, tit. 4, pr. §§ 4, 6.* The investiture might be proved either in this way, or by the *pares curtis*, peers of the court. *Id. ibid.*

In old English law. A conveyance of land reduced to writing and attested by witnesses, whose names were subjoined. *Spelman. See Brevia testata.*

In old Scotch law. An acknowledgment in writing, made out on the lands at

the time of giving possession to a vassal, and attested by the seals of the superior and *pares curiæ*. Afterwards, the *breve testatum* was signed by the superior, wherever he happened to be, and possession was given separately by the superior's bailie. *Bell's Dict. Ersk. Inst.* b. 2, tit. 3, § 17. See *Brevia testata*.

BREVET. Fr. In old French law. A patent; letters patent from the crown. *Dunkin's Address*, 29, 36.

BREVIÀ, (plur. of *Breve*). L. Lat. In old English law. Writs. *Dicuntur brevia propter eorum brevitatem*; they are called writs on account of their brevity. 3 Co. 44. *Dicuntur brevia, cum sint formata ad similitudinem regulæ juris, quæ breviter et paucis verbis intentionem proferentis exponunt*; they are called *brevia* (writs) because they are framed after the likeness of a rule of law, which briefly and in few words set forth the claim of the complaining party. *Fleta*, lib. 2, c. 13, § 2. See *Breve. Brevia adversaria*; adversary writs; writs brought by an adversary to recover land. 6 Co. 67. *Brevia amabilia*; amicable writs, or those brought by consent and agreement amongst friends. *Id. ibid.*

BREVIÀ FORMATA, or **DE CURSU**. L. Lat. Writs of form, or of course. Original writs, the form of which was fixed, and which issued of course without special cause shown. *Bract.* fol. 413 b, 202. *Fleta*, lib. 2, c. 13, § 2. *Thel. Dig.* lib. 1, c. 2. 4 *Reeves' Hist. Eng. Law*, 430. *Brownl.* part 2, 147.

BREVIÀ JUDICIALIA. L. Lat. Judicial writs; writs which followed after the writs *de cursu*, and which varied according to the varieties of actions and defences. *Bract.* fol. 413 b. *Fleta*, lib. 2, c. 13, § 3.

BREVIÀ MAGISTRALIA. L. Lat. Writs occasionally issued by the *masters* or clerks of chancery, the form of which was varied to suit the nature of the action and the circumstances of each case. *Bract.* fol. 413 b. *Fleta*, lib. 2, c. 13, § 4. *Thel. Dig.* lib. 1, c. 2. 3 *Woodes' Hist. Lect.* 89.

BREVIÀ TESTATA. L. Lat. Short written memoranda, attested by witnesses, and used in feudal times to perpetuate the tenor of conveyances and investitures, after parol grants had given rise to disputes and uncertainties. *Feud. Lib.* 1, t. 4. 2 *Bl. Com.* 307. See *Breve testatum*. Their authority rested altogether on the testi-

mony of the witnesses, (who were the neighbors and peers of court) there being no execution or sealing by the parties themselves; (*utpote nullius sigillo, sed testium autoritate valida.*) *Spelman*. Blackstone regards our modern deeds as merely improvements or amplifications of these *brevia*. 2 *Bl. Com. ub. sup.* *Spelman* refers to the *Liber Ramesiensis*, as containing many conveyances of this kind.

BREVIARIUM ALARICIANUM, or **BREVIARIUM ANIANI**. Lat. (The breviary, or abridgment of Alaric, or of Anian.) A code of law compiled by order of Alaric II. king of the Visigoths, for the use of the Romans living in his empire, published A. D. 506. It was collected by a committee of sixteen Roman lawyers, from the *Codex Gregorianus*, *Hermogenianus*, and *Theodosianus*, some of the later novels, and the writings of Gaius, Paulus and Papinianus. In the middle ages, it is commonly referred to, under the titles *Corpus Theodosianum*, *Lex Theodosiana*, *Liber Legum*, or *Lex Romana*. 1 *Mackeld. Civ. Law*, 49, § 59. It was first published in 1528, and has been critically examined by Savigny, whose conclusion is that Anianus was the referendary or chancellor of Alaric, and, as such, certified the authenticity of the copies sent to the courts for their government, but was no further concerned in its compilation. *Sav. Geschichte des Rom. Rechts*, vol. 2, pp. 41—45. See *Schmidt's Civ. Law*, Introd. 25, 26.

BREVIATE. In English law. An abstract, or epitome; a brief. *Holthouse*. 12 *Mod.* 560.

A short extract, or copy of a paper or writing. *Hob.* 114.

BRIBERY. [from Fr. *briber*, to devour, or eat greedily.] In criminal law. The offence of taking any undue reward by a judge, juror, or other person concerned in the administration of justice, or by a public officer, to influence his behaviour in his office. 4 *Chitt. Bl. Com.* 139, and note. 3 *Inst.* 145. 1 *East*, 183. 4 *Burr.* 2494. 1 *Russell on Crimes*, 154. 2 *N. Y. Rev. St.* [682,] 569, § 10.

The offence of offering a bribe to a judicial or public officer, whether it be accepted or not. 4 *Bl. Com. ub. sup.* 3 *Inst.* 147. 2 *East*, 5. *Russ. & R. Cr. C.* 107. 2 *Dallas' R.* 384. 2 *N. Y. Rev. St.* [682,] 568, § 9. The attempt to bribe is a crime; it is complete on his side who offers it. Lord Mansfield, 4 *Burr.* 2500.

The offence of giving, promising or receiving money to procure votes, or to influence voters at elections to public offices. *Stat. 49 Geo. III. c. 118. Stat. 5 & 6 Will. IV. c. 76. 1 N. Y. R. St. [149,] 136, § 4.*

BRIEF. In practice. An abridgment of a plaintiff's or defendant's case, prepared by his attorney, for the instruction of counsel on a trial at law. It generally consists of an abstract of the *pleadings*, a statement of the *facts* of the case as they will be proved, and a list of the names of the *witnesses*, with a statement of what each will prove. To these are sometimes added observations by the attorney, in the nature of suggestions to counsel. *1 Arch. Pr. 185. Arch. Forms, 116.*

BRIEF. *Briefe, Brieffe, Briefve, Bref.* L. Fr. A writ. *Briefe de droit*; a writ of right. *Co. Litt. 158 b.*

BRIEF. Germ. and Dutch. A writing; a written instrument; a letter, or writing in the form of a letter. See *Biel brief, Grond brief, Mahl brief, Mess brief.*

BRIEVE. [from Lat. *breve*, q. v.] In Scotch law. A writ. *1 Kames' Equity, 146. 1 Forbes' Inst. part 4, b. 2, c. 1, tit. 2, § 1. See Bell's Dict.*

BRIGA. L. Lat. [Fr. *brigue*.] In old European law. Strife; contention; litigation; controversy. *In brigam ponere terras*; to put or bring lands into controversy. *Spelman. Cowell. Blount.*

BRIGBOTE, Briggebote. Sax. [from *brig*, bridge, and *bote*, reparation.] In Saxon and old English law. A tribute or contribution towards the repairing of bridges. See *Brug bote.*

An acquittance, (*quietantia*) or exemption from such duty. *Fleta, lib. 1, c. 47, § 22.*

BRIS. Fr. In French maritime law. Literally, breaking; wreck. Distinguished from *nauffrage* (q. v.) *Emerig. Tr. des Ass. ch. 12, sect. 12, § 1. Ord. Mar. liv. 4, tit. 9.*

BRITTON. The author of a treatise on the law of England, in Law French, supposed to have been written or published under the direction of Edward I. Lord Coke makes him to be the same person with John Breton, who was Bishop of Hereford and a judge, in the reigns of Henry III. and Edward I. *8 Co. pref. 10 Co. pref.* This opinion has been disputed by others, (though it has the support of the old chronicler Florilegus, otherwise called Matthew of Westminster,) on the ground that the

treatise itself makes mention of several statutes known to have been passed after this Bishop of Hereford's death, which took place A. D. 1275. *Hengham, p. 129, note, cited in Wingate's Britton, pref. 2 Reeves' Hist. Eng. Law, 281.* Another opinion is, that the work was written by a judge of the same name with the bishop, and who was a contemporary of Bracton. *Hengham, ub. sup.* Lord Coke's statement that the bishop published his work in the fifth year of Edward I. can hardly be correct, as the old accounts agree that he died in the third year of that reign. It is reasonably certain, however, that he wrote the work, and that it was published after his death, with additions comprising the statutes above referred to. *Wingate's Britton, pref.*

The author's name has been variously written, *Britton, Briton, Le Breton, Breton, and Beckton*; a circumstance not uncommon at that early age. The same name has also been given to the work itself; thus, Florilegus above mentioned says of the Bishop of Hereford, that "he wrote a book upon the laws of England, which is called *Le Breton*." Pitseus observes that he compiled from various authors a great volume of laws, which he called *Lex Anglicana*, or *Breton*. According to Balæus, the title was *De Legibus Anglicanis*; according to F. Godwin, *De Juribus Anglicanis*. Wingate, in his edition, (1640,) gives it the name of the author, *Britton*. The later edition by Kelham (1762) is published under the title of *The Ancient Pleas of the Crown*.

From the similarity of the subject-matter, as well as some resemblance in the name, this treatise is generally considered as a mere abridgment of the great work of Bracton, interspersed with some new matter. See *Selden's Diss. ad Fletam, c. 2, sec. 3.* It is not, however, without claims to the character of an original production, and seems to have originally stood higher than Bracton as an authority. It is called good authority by Fitzherbert, *J. Dyer, 13 b.* It is composed of one hundred and twenty-six chapters, written in the true French of the time, embracing various heads of civil and criminal law and practice; and commences in the king's name: — *Eduarde, par la grace de Dieu, roy Dengleterre et seignieur de Irlaunde, a tous ses feals et ses leaus, et ses sujets de Engleterre, et de Irlaunde, pees et grace de*

salvacion; (Edward, by the grace of God, king of England and lord of Ireland, to all his faithful and liege people and his subjects of England and of Ireland, peace and grace of salvation.) A marked feature of the work, as distinguished from that of Bracton, is the absence of all reference to the civil law.

The text of Britton has been greatly corrupted and mutilated. Hence the remark of Montague, C. J., that the book contains many errors. *Plowd.* 58, arg. Wingate, in his edition of 573 pages, (or 287 folios) 12mo. has given a list of 650 corrections, or substituted readings.

BROCAGE, Brokage. [L. Lat. *brocagium*, *abrocagium*.] In old English law. The wages or hire, compensation or commission of a broker. *Cowell. Blount.* In the stat. of 1 Jac. I. c. 21, it is written *brokerage*, which is the modern term. The old form of the word is still retained in the expression *brokerage of marriage*, which signifies a reward or compensation for bringing about a marriage. See *Marriage brokerage*.

The business or occupation of a broker. *De Vyne's case*, cited 16 *Mees. & W.* 177, note.

BROCARIUS, Broccarius. L. Lat. In old Scotch law. A broker, (Sc. broker,) negotiator, mediator, or middle-man, in any transaction or contract. *Skene de Verb. Signif. Cowell. Blount.*

BROCCATOR. L. Lat. In old English law. A broker. *Blount*, voc. *Broker*. See *Broccarius*.

BROCELLA, Broccella. L. Lat. [L. Fr. *broce*, *brocelle*; from O. Lat. *bruscia*, *brocia*.] In old English law. A wood; a thicket or covert of bushes and brushwood. *Cowell. Blount.*

BROCHE. L. Fr. A lance. *Britt.* c. 66.

BROCHIA. L. Lat. [from L. Fr. *broche*, q. v.] A word used by Bracton in describing the equipment of a horseman intended for military service, which Spelman supposes to have meant a large vessel for carrying liquids. *Bract.* fol. 36, 87 b. It seems, however, properly to signify a horseman's lance, from the Fr. *broche* of the same meaning, which is the word employed by Britton in what may be considered the parallel passage. *Britt.* c. 66. That it was an iron instrument is clearly shown by an extract given in Cowell, from a record 13 Edw. I. See *Saccus*.

BROCKER. O. Sc. In Scotch law.

A broker. *Skene de Verb. Sign. voc. Broccarii.*

BROGGER. [L. Fr. *broggour*.] A broker; so called in old English statutes. *Stat.* 10 Ric. II. c. 1. Adjudged to be a good addition in law. *Yearb.* H. 9 Hen. VI. 65, cited *Thel. Dig.* lib. 6, c. 1.

BROKER, (anciently **BROGGER**) [L. Lat. *broccator*, *abrocator*, *broccarius*, and sometimes *auctionarius*, and *correctorius*; Lat. *prozeneta*.] One who makes a bargain for another, and receives a commission for so doing. *Tindal, C. J.* 6 *Bing.* 702, 706. An agent employed among merchants and others, to make contracts between them in matters of trade, commerce or navigation, for a commission commonly called *brokerage*. *Russell on Factors*, 3, 4.—An agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation, for a compensation commonly called *brokerage*. *Story on Agency*, § 22.

A broker is not, in general, authorized to act or contract in his own name; nor is he entrusted with the possession of what he is employed to sell, or empowered to obtain possession of what he is employed to purchase; but he acts merely as a middleman or negotiator between the parties; and in these respects he is distinguished from a *factor*. 2 *B. & Ald.* 137, 143. *Russell on Factors*, 4. 2 *Kent's Com.* 622, note.

* * The earliest definitions of this term confine the employment of brokers to dealings *between merchant and merchant*, exclusively. Thus, by the statute 1 Jac. I. c. 21, brokers are described to be persons employed by "*merchants* English and *merchants* strangers, in contriving, making and concluding bargains and contracts between them, concerning their wares and merchandizes, and moneys to be taken up by exchange between such merchants and merchants, and tradesmen." *Russell on Factors*, 2. *Blount.* Chief Baron Comyn describes them as "persons employed among *merchants*, to make contracts between them, and to fix the exchange for payment of wares sold or bought." *Com. Dig.* Merchant, (C). These definitions, however appropriate at a period when merchandize and exchange brokers appear to have constituted the only classes of this description of agents, have been very properly regarded by modern writers as too limited to include the various classes of

brokers recognized at the present day ; although in a late case in England, the Court of Exchequer seemed disposed to abide by the ancient interpretation of the term. 16 *Mees. & W.* 174.

The etymology of the term *broker* has been variously given. By some it has been derived from the Saxon *broc*, misfortune, as denoting a *broken* trader ; the occupation being formerly confined, it is said, to unfortunate persons of that description. *Tomlins.* According to others, it is formed from the French *broieur*, a grinder or breaker into small pieces, a broker being one who *beats*, or draws a bargain into particulars. *Termes de la Ley. Cowell.* The Law Latin form *abroicator*, however, seems to point distinctly to the Sax. *abræcan*, (to break), as the true root, which, in the old word *abbrockment* (q. v.) or *abroachment*, had the sense of *breaking up goods*, or selling at retail. A broker, therefore, would seem to have originally signified a *retailer*, and hence we find the old word *auctionarius* (q. v.) used in both these senses.

BROKERAGE. The commission or per centage paid to a broker, on the sale or purchase of property, or the transaction of business.

BRUARIUM, Bruyrium. L. Lat. [from Fr. *bruyere*, a heath.] In old English law. A heath ground ; ground where heath grows. *Spelman.*

Bruera ; a heath, or heathy ground. *Bract.* fol. 231. *Fleta*, lib. 2, c. 71, § 7. *Reg. Orig.* 1 b, 2. *Co. Litt.* 4 b. 1 *Leon.* 169.

Brueria ; a heath. *Fleta*, lib. 2, c. 41, § 2. *Id.* lib. 4, c. 27, § 16.

Bruerum ; a heath. *Bract.* fol. 229 b.

BRUGBOTE, Brigbote, Briggebote. Sax. [from *brug*, or *brig*, a bridge, and *bote*, reparation.] In old English law. A tribute or contribution towards the repairing of bridges. *Quietum esse a brugbote* ; to be quit of *brugbote* ; to be free from this duty. *Spelman.*

BRUILLUS, Brogillus. L. Lat. [Fr. *breil*, *brevil*.] In old English law. A wood or grove ; a thicket or clump of trees in a park or forest. *Cowell. Whislaw.*

Bruilletus, (dimin. of *bruillus*) ; a small coppice wood or thicket. *Cowell.*

BRUKBARN. Swed. In old Swedish law. The child of a woman conceiving after a rape, which was made legitimate. Literally, the child of a struggle, (*filius*

luctæ). *Barringt. Obs. Stat.* citing *Stiernhook*. l. 2, c. 9.

BUCK', Buck's. Abbreviations of *Buckinghamshire*, in old records. 1 *Instr. Cler.* 28.

BRUSOUR. L. Fr. In old English law. A breaker. *De brussours de la prison le roy* ; of breakers of the king's prison. *Britt.* c. 29.

Brusure ; a breaking. *Brusure de pountz* ; breaking of bridges. *Britt.* c. 122.

BRUSSURA. L. Lat. A bruise. *Bract.* fol. 122.

BULLA. Lat. [Græco-barb. *βουλλα*, *βουλλα*.] A seal used by the Roman emperors, during the lower empire ; and which was of four kinds, gold, silver, wax and lead. These are described by *Spelman* in detail.

A letter, brief or charter, sealed with such a seal, (*literæ bullatæ*). *Spelman.*

A brief, mandate or *bull* of the pope, having usually a leaden, but sometimes a golden seal. *Id. Blount. Cowell.*

BULLARIA. L. Lat. [L. Fr. *boillourie*.] In old English law. A bullary, or boilary ; a place for boiling. *Bullaria aquæ salæ* ; a boilary of salt water ; a salt-house or salt-pit, where salt is boiled. *Towns. Pl.* 57. *Co. Litt.* 4 b.

Bullitio salis ; a boiling of salt ; as much brine or salt as was made from one boiling. *Cowell.*

BULTELLUM. L. Lat. [L. Fr. *buttel*.] In old English law. The boulding of grain, after it is ground ; or the sieve with which it was boulded, indicating the degree of fineness. *De eodem blado et eodem bultello* ; of the same grain and the same boulding. *Fleta*, lib. 2, c. 9, § 1.

BUNDA, Bonda, Bonna. L. Lat. [L. Fr. *bunde* ; from Sax. *bunna*, an elevated object ; Gr. *βουνος*, a hill, or hillock ; or from Sax. *ban*.] In old English law. A bound, boundary, border or limit, (*terminus, limes*). *Spelman*, vocc. *Bannum, Bonna.* 4 *Inst.* 318.

Bundæ, et metæ et rationabiles divisæ ; bounds and metes and reasonable limits. *Bract.* fol. 166 b. *Per bundas et signa* ; by bounds and marks. *Fleta*, lib. 5, c. 41, § 2. *Per metas et bundas* ; by metes and bounds. 2 *Crabb's Real Prop.* 146, §§ 1149, 1150. *Secundum metas, maras, bundas et marchias forestæ* ; according to the metes, meres, bounds and marches of the forest. 18 *Edw. III. Itin. Pick.* fol.

6, cited in *Blount*, voc. *Bound*. And see *Reg. Orig.* 263 b. *Reg. Jud.* 84 b.

BURDEN OF PROOF. [Lat. *onus probandi*.] In the law of evidence. The necessity or duty of proving a fact or facts in dispute on an issue raised between the parties in a cause. See *Onus probandi*.

BURG, Burgh. Sax. [L. Lat. *burgus*.] A castle, or fortified place. *Spelman*, voc. *Burgus*. "According to Sir F. Palgrave, the *burgh* among the Anglo-Saxons was an hundred, or assemblage of hundreds, surrounded by a wall or moat. *Palgr. Rise*, p. 102.

A borough. *Spelman*. See *Burgus*.

BURGAGE. A dwelling-house in a borough town, anciently so called. *Blount*. *Burgag' n'est rien sinon mese en ville de bourgh.* *Yearb. M. 6 Edw. II.* 184. The term "burgage-house" is still used. 16 *East*, 406.

BURGAGE TENURE. [L. Lat. *burgagium*; L. Fr. *bourgage*, from Sax. *burg*, L. Lat. *burgus*, a borough.] In English law. A tenure by which houses, or lands which were formerly the site of houses, in ancient boroughs, are held of the king, or other lord of the borough, at a certain yearly rent. *Glanv.* lib. 7, c. 3. *Litt.* sect. 162, 163. *Co. Litt.* 108 b. 2 *Bl. Com.* 82. *Blount*. 1 *Steph. Com.* 198. 1 *Crabb's Real Prop.* 593, § 749. It is considered to be a species of socage; the tenements being holden either by a certain annual pecuniary rent, or by some services relating to trade or handicraft; such as repairing the lord's buildings, providing the lord's gloves or spurs, &c., but no way smelling of the plough or tillage, and having no relation to military service. *Litt.* sect. 162. *Somner, Gavelk.* 142—148. *Spelman*, voc. *Burgagium*. *P. Cyclopædia*.

BURGAGIUM. L. Lat. In old English law. *Burgage*; the tenure of *burgage*. *Mag. Cart. Johan.* c. 37. *Id.* 9 Hen. III. c. 27.

BURGARI, Burgenses. L. Lat. [from *burgus*, a borough; Sax. *burghwara*.] In old English law. *Burghers* or *burgesses*; inhabitants of a *burgus*, borough, or walled town. *Spelman*, voc. *Burgarii*.

BURGATOR. L. Lat. [from *burgus*, a borough, a town, or enclosed place.] In old criminal law. A burglar or house-breaker; one who broke into and robbed a *burg*, or enclosed place. *Spelman*, voc. *Burglaria*. The *burgator* was distinguish-

ed from the *prædo* and *robbator* (robber) as well as the *latro* and *fur*, (thief). *Fleta*, lib. 1, c. 16, § 6. *Id.* c. 20, § 5. *Id.* lib. 2, c. 52, § 9. See *Burglar*.

BURGBOTE, Burghbote. Sax. [from *burg*, a castle, or town, and *bote*, reparation.] In old English law. A tribute or contribution (*auxilium*), towards the repairing of castles or walls of defence, or of a borough or city. *Spelman*. *Co. Litt.* 109 a. *Cowell*.

Exemption from such a tribute. *Fleta*, lib. 1, c. 47, § 21.

BURGEMOTUS. L. Lat. In Saxon law. A burg mote, or burgh mote. *Spelman*. See *Burghmote*.

BURGENSES. L. Lat. In old English law. Inhabitants of a *burgus* or borough; *burgesses*. *Fleta*, lib. 5, c. 6, § 10.

BURGESS. [L. Lat. *burgarius, burgensis*.] In English law. An inhabitant or freeman of a borough or town; a person duly and legally admitted a member of a municipal corporation. *Spelman*, voc. *Burgarii*. 3 *Steph. Com.* 188, 189. See *Municipal corporation*. A *burgess* of a borough corresponds with a *citizen* of a city; and these are mentioned as distinct classes in the statute 5 Ric. II. c. 4; although the inhabitants of a city were sometimes called *burgesses*, and this application of the word is now revived in England. *Spelman*, *ub. sup.* 5 *East*, 208. 1 *Man. & Gr.* 1, note (a).

An elector or voter; a person legally qualified to vote at elections. The word in this sense is particularly defined by the statute 5 & 6 Will. IV. c. 76, ss. 9, 13. 3 *Steph. Com.* 192.

A representative of a borough or town, in parliament. *Co. Litt.* 109 a. 1 *Bl. Com.* 174. See *Borough*. One of the branches of the legislature of the state of Virginia was formerly called the House of *Burgesses*.

A magistrate of a borough. *Blount*.

* * * The origin of this term dates from a period prior to the Norman Conquest, it having been usual for such persons of free condition as were not land-owners, to settle in the towns, and occupy houses there, as tenants to the crown or some inferior lord, under the name of *burgesses*; to form themselves by license from the crown, (as many classes of persons did in that age,) into voluntary associations of fraternities called *guilds*; to be entitled in their capacity of *burgesses* to certain property, and in the

same capacity to be exempt from certain burthens, and to be subject to certain liabilities. 3 *Steph. Com.* 189. *Domesday Book*, cited *ibid.* *Spelman*, voc. *Burgarii*. *Stat. Merton*, c. 7.

BURGESS ROLL. In English law. A roll or list, in the form of a book alphabetically made out, required by the municipal corporation act, (5 & 6 Will. IV. c. 76,) to be kept in corporate towns or boroughs, containing the names of those burgesses who are entitled to such new rights as the act for the first time confers on these boroughs. 3 *Steph. Com.* 192, and note (k); 196, 197. This seems to be otherwise called the *burgess list*; although a distinction between the terms has been contended for. 3 *Ad. & El.* (N. S.) 475, 480.

BURGESSOURS, Bourgesours. L. Fr. Burglars are so called by Britton, cc. 10, 29.

BURGH. [Lat. *burgus*.] A borough. *Litt.* sect. 162, 164. *Co. Litt.* 108, 109.

BURGHBRECH, Burghbrech, Borghbrech. [Sax. *borhbryce, borhbrece*; from *borh*, a pledge or surety, and *bryce*, a breach or violation.] In Saxon law. Breach of pledge, (*fidejussionis violatio, plegii fractio*); the offence of violating the pledge given by every inhabitant of a tithing, to keep the peace; breach of the peace. *Spelman*. See *Borghbrech*.

BURGH ENGLISH. See *Borough English*.

BURGH ENGLOYS. Borough English, (q. v.) *Yearb.* P. 1 Edw. III. 38.

BURGHERISTH. Sax. A word used in *Domesday*, supposed to signify a breach of the peace in a town; although *Spelman* speaks doubtingly of its meaning. *Cowell*. *Spelman*. Mr. Sumner thinks it should be *burghbrich*.

BURGHMOTE, Burgmote, Burgemote. Sax. [L. Lat. *burgemotus, burgemotus, burgimotus*; from *burg*, a burgh, and *mote* or *gemote*, a meeting.] In Saxon law. The court or meeting of a burgh or borough; a borough court, (*curia burgensis*.) A court held in burghs or towns three times a year, at which the earldorman, or alderman presided. *LL. Edg.* c. 5. *LL. Canuti*, c. 44. *Spelman*. 1 *Spence's Chancery*, 58. *Crabb's Hist. Eng. Law*, 27. See *Gemote*.

BURGHWAR, plur. Burghwarn. Sax. [from *burg*, and *war*, a man.] In Saxon law. An inhabitant of a burgh, or borough, (*burgi vir*); a burgess or burgher; (*bur-*

gensis, burgarius.) *Williem, King, grets Williem, bisceop, & Godfred portrefan, & ealle tha burghwarn binnan London, &c.*; William, King, greets William, bishop, and Godfrey, portgreve, and all the burgesses within London. The commencement of a charter granted by William the Conqueror to the city of London. *Spelman*. *Cowell*, voc. *Portgreve*. *Blount*, h. v.

BURGLAR. [L. Lat. *burglator, burgator*, quasi *burgi latro*, the robber of a burg, or fenced place.] In criminal law. A nocturnal housebreaker; one who by night breaks and enters into a mansion [or dwelling] house, with intent to commit a felony. 3 *Inst.* 63. See *Night*.

In American law, this definition has been considerably modified. See *Burglary*.

BURGLARIOUSLY. In criminal pleading. A word held essential in indictments for burglary, as the corresponding Latin word *burglariter* formerly was. *Wharton's Am. Crim. Law*, 101. See *Burglariter*. In Massachusetts, however, under the revised statutes, it has been held not essential. 4 *Metcalf's R.* 357.

BURGLARITER. L. Lat. (*Burglariously*.) In old criminal pleading. A necessary word in indictments for burglary. 3 *Bl. Com.* 307. Held to be a word of art (*vox artis*), which could not be expressed by any periphrasis or circumlocution. 4 *Co.* 39. *Cro. Eliz.* 920. 2 *East*, 30.

BURGLARY. [L. Lat. *burglaria, burgi latrocinium*; Fr. *burg laron*; Sax. *husbrec*.] In English criminal law. The crime of breaking and entering into a dwelling-house, or a building immediately connected therewith, in the night, with intent to commit a felony, whether such felonious intent be executed or not. 3 *Inst.* 63. 1 *Hale's P. C.* 549. 4 *Bl. Com.* 224. *Stat.* 7 & 8 Geo. IV. c. 29, s. 13. 4 *Steph. Com.* 146, 148. 1 *Russell on Crimes*, 785. *Wharton's Am. Crim. Law*, 352. Succinctly defined by Finch, "the night breaking of a house, with intent to steal or kill." *Finck's Law*, b. 3, c. 22.

The breaking out (*effractio*) of a dwelling-house in the night time, after having entered it with intent to commit felony, or after committing a felony while in such house. *Stat.* 7 & 8 Geo. IV. c. 29, s. 11. *Steph. Crim. Law*, 162. 4 *Steph. Com.* 151. See *Breaking, Effractores, Entry, Dwelling-house, Curtilage, Night*.

In American law, the English definition of burglary has been so far modified as to

include offences committed by *day* as well as by night, and in *other* buildings than *dwelling-houses*; and various *degrees* of the crime have been established by statute in several of the states. *Wharton's Am. Crim. Law*, 350, 352.

* * The term *burglary*, according to *Spelman*, is of Norman origin, the corresponding term in Saxon law being *husbrec*. It is usually supposed to be derived either from the Lat. *burgus*, a town, dwelling or enclosed place, and *latrocinium*, robbery, or from Fr. *bourg*, and *larrecin*, of similar significations; its radical meaning being the robbery, (or the breaking into, with a view to the robbery) of any fenced or *enclosed place*, as distinguished from the open country. *Spelman*, voc. *Burglaria*. *Cowell*. See *Burgus*. Hence it originally signified the breaking open, not only of a dwelling-house, but of a church, and also the breaking of the walls or gates of a town (*burgus*), or city, (which, after the civil law, were anciently considered sacred,) with intent to commit a felony. *Spelman*. *Bract*. fol. 8, 207 b. So *Britton* defines burglars to be "those who feloniously, in times of peace, break churches, or the dwelling-houses of others, or the walls or gates of cities, or burghs." *Britt.* c. 10. The circumstance of breaking *by night*, (*noctanter*), was not originally considered a characteristic of this crime, but seems to have been introduced in the reign of Edward IV. *Spelman*. 4 *Reeves' Hist. Eng. Law*, 539. *Crabb's Hist. E. L.* 309. *Bracton* classes burglars with robbers and murderers, who practice their wickedness by day and by night; (*murditores, et robbatores, et burglatores, qui malitiam suam exercent die ac nocte.*) *Bract*. fol. 115 b.

BURGLATOR. L. Lat. In old English law. A burglar. *Bract*. fol. 115 b, 117.

BURGUNDIAN LAW. See *Lex Burgundionum*.

BURGUS. L. Lat. [*Sax.* *burg, burh, burch, berg, beorg, birg, byryg, burug*; from Gr. *τινος*, a tower.] In old European law. A fortified or enclosed place or dwelling, (*locus munitus, habitaculum munitum*). *Spelman*.

A town or place enclosed with a wall or rampart. *Id.* The large *burgi* or towns in England had gates like cities. *Fleta*, lib. 1, c. 24, § 4.

Any town of note, not enclosed. *Spelman*.

A borough or burgh. *Id.*

A place distinguished both from a city, (*civitas*), and a town, (*villa*), and occupying a middle rank between both. *Mag. Cart.* 9 Hen. III. c. 9. *Id. Johan.* c. 13. See *Borough*.

BURLAWS, *Birlaws, Byrlaws*, [from Belg. *baur*, a husbandman.] In Scotch law. Laws made by neighbors elected by common consent in the birlaw courts. *Skene de Verb. Signif.*

Laws made by husbandmen, &c., concerning neighborhood, (*rusticorum leges*.) *Id. in Reg. Maj.* lib. 4, c. 39, § 8. *Spelman* (voc. *Bellagines*) considers this word essentially the same with *by-laws*, (q. v.)

BURLAW (BYRLAW or BIRLAW) COURTS. In Scotch law. Courts composed of neighbors elected and chosen by common consent, which take cognizance of complaints between neighbor and neighbor; the judges (who are arbitrators) being called *birlaw-men*, or *byrlaw-men*. *Skene de Verb. Signif. Spelman*, voc. *Bellagines*. See *By-law-men*.

BURN. [*Lat. comburere*.] To consume with fire. The verb "to burn," in an indictment for arson, is to be taken in its common meaning of "to consume with fire." 17 *Georgia R.* 130. See *Fire*.

BURNING IN THE HAND. In old criminal law and practice. The punishment of burning with a hot iron on the brawn of the left thumb, formerly inflicted upon lay offenders who were allowed the benefit of clergy, in order to distinguish their persons, so as to prevent their claiming that privilege a second time. 4 *Bl. Com.* 367. 5 *Co.* 51.

The old entry of judgment in these cases was: *Ideo consideratum est quod* (le offender) *cauterizetur in manu sua lava, &c.*; Therefore it is considered that (the offender) be burnt in his left hand, &c. *Rast. Entr.* 1, 6, & 56 a. *T. Raym.* 370. See *Siddons v. Johnson*, 2 *Show.* 386. The burning itself was done in open court, and seems to have been subject to the direction of the judges. 1 *Salk.* 61. Thus, in an old case where a prisoner was found guilty of manslaughter, under circumstances of great provocation, it is said he "had his clergy at the bar, and was burned in the hand, and the court directed the executioner to *burn him gently*, because there could not be greater provocation." *T. Raym.* 212. To what length the courts carried their discretion in this particular appears strikingly from a remark made by counsel in a more

modern case, that "the punishment of burning in the hand is constantly and notoriously done in the *face*, and with the knowledge of the judges themselves, *with a cold iron*." 2 *Burr.* 794. See 12 *Mod.* 448. 3 *P. Wms.* 451. See *Clergy, Benefit of Clergy.*

BURROUGH. An old form of *Borough*. *Burr. Sett. Cas.* 19.

BURROWMEALIS, Burrow-meals, Burrow-mailles, (Borough mailles.) In Scotch law. Rents paid to the king by the burgesses, (*burgenses*) or inhabitants of a borough, or burrow, and which went to the king's private treasury, (*fisco et patrimonio regis*). The word *mealis*, (the form of the Scotch plural,) is considered by Spelman as signifying the same thing as the old English law term *firma*, a *ferm* or *farm*, i. e., provisions, or rent paid in provisions. It is probably the same with *mail* in the word *blackmail*, and with the modern English *meal*, a portion of food taken at stated intervals. See *Blackmail, Ferm, Maile.*

BURSA. L. Lat. In old English law. A purse. *Spelman. Bract.* fol. 84. *Fleta*, lib. 6, c. 28, § 1. *Bursarum scissores*; cutters of purses; cut-purses. *Fleta*, lib. 1, c. 38, § 11.

A bag. *Fleta*, lib. 2, c. 82, § 2.

BURSE. L. Fr. A purse. *Britt.* c. 29.

BURYING ALIVE. In English law. The ancient punishment of sodomites, and those who contracted with Jews. *Fleta*, lib. 1, c. 27, § 3.

BUSCA. L. Lat. In old English law. *Hedgewood. Reg. Orig.* 105.

Underwood, billet or brushwood. *Blount. Cart. de Forest.* c. 14. *Fleta*, lib. 2, c. 41, §§ 9, 10. See *Boscus*.

BUSCARL, Butsecarl, Buzecarl. Sax. [from *bussa*, a ship, and *carl*, an attendant.] In Saxon and old English law. Seamen or marines, (*milites nautici*.) *Spelman. Domesday, Titt. Wiltsc. Wilton.*

BUSELLUS, Bussellus, Bussellum. L. Lat. A bushel. See *Bussellus*.

BUSHEL. [L. Fr. *bussel*; L. Lat. *bussellus, bussellus*.] A measure of capacity containing eight gallons. The Winchester bushel, which was the standard measure used in England from the time of Henry VII to the year 1826, contained 2150.42 cubic inches. By statute 4 & 5 Geo. IV. c. 74, the Imperial bushel for liquids was made to contain (according to the standard gallon,) 80 pounds of distilled water, or 2218.192 cubic inches. By the same act

the bushel for dry measure was prescribed to contain 2815 cubic inches. This was a heaped bushel, but it was abolished by stat. 4 & 5 Will. IV. c. 49.

In the United States, the Winchester bushel has generally been adopted. In New-York, the provisions of the statute 4 & 5 Geo. IV. c. 74, have been in a great degree followed, and the bushel is declared to contain, at the mean pressure of the atmosphere, at the level of the sea, eighty pounds of distilled water at its maximum density. 1 *Rev. St.* [608, § 14,] 618, § 19. See 3 *Rev. St.* 531—546, (2d ed.) The heaped bushel is expressly retained. 1 *Id.* [608, §§ 15, 16,] 618, §§ 20, 21.

BUSONES. L. Lat. A word occurring in the following passage of Bracton: *Justiciarii, vocatis ad se quatuor, vel sex, vel pluribus de majoribus comitatibus, qui dicuntur busones comitatibus, &c.* *Bract.* fol. 115 b. Mr. Reeves observes that the anomalous appellation of *busones* is to be met with nowhere but in this passage. 2 *Reeves' Hist. Eng. Law*, 2, note. Spelman says the words *qui dicuntur busones comitatibus* were wanting in his MS. copy. *Gloss.* in voc. The word *busones*, if genuine, no doubt signified the principal persons of the county, and is thought by some to have been synonymous with *barones*, (barons). *Crabb's Hist. Eng. Law*, 161. Some copies have *barones*.

BUSOYGNE. L. Fr. Matter; business. *Fet Assaver*, § 50.

BUSSA, Buscia. L. Lat. In old English law. A ship of large size and clumsy construction, (*panda albo et obtusa prora*.) *Spelman.* The word *buss* is now used to denote a small sea vessel employed by the English and Dutch, in the herring fishery. *McCulloch's Dict.*

BUSSEL. L. Fr. A bushel. *Bussels et demy bussels.* *Britt.* c. 30.

BUSSELLUS. L. Fr. [contracted from *butticellus, butticella*, dim. of *butta*, q. v.] In old English law. A bushel. *Fleta*, lib. 2, c. 8. *Id.* lib. 2, c. 73, § 3. It consisted of eight gallon measures of wheat, (*octo jalonata frumenti*). *Id.* c. 12, § 1. *Standardum busselli, galona et ulna sigillo domini Regis ferreo signentur*; the standard bushel, gallon and ell shall be stamped with the king's iron seal. *Stat. de Pistoribus*, 31 *Edw.* I. c. 8. *Spelman.* See *Galo*.

BUTLERAGE. In old English law. A very ancient hereditary duty belonging to the crown, at first called *prisage*, (q. v.)

being the right of *taking* two tuns of wine from every ship importing into England twenty tuns or more; which by charter of Edward I. was exchanged into a duty of two shillings for every tun imported by merchant strangers, and called *butlerage*, because paid to the king's butler. 1 *Bl. Com.* 315. *Termes de la Ley. Molloy de Jur. Marit.* 302. *Calthrop's R.* 23, 24. *Fleta*, lib. 2, c. 22. 2 *Inst.* 59, 60.

BUTT. In old English law. A measure of wine, containing at least 126 gallons. *Stat. 1 Ric. III. c. 13. Cowell.* See *Butta*.

A measure of land. See *Buttum*.

BUTTA, Buttis. L. Lat. [Fr. *bout*; Sax. *byt*, *bytte*, a leathern bottle or bag.] In old English law. A standing measure of wine. *Cowell, voc. Bussellus. Yearb. M. 9 Hen. VI. 34.* A vessel for measuring, holding or carrying liquids.* The bags of leather in which they formerly carried water from the Severn into the city of Worcester were called *byttes*, and each load of water was termed a *bytte* of water. *Kennett's Gloss. voc. Bussellus. Cowell.*

BUTTALS. [contracted from *abuttals*, q. v.] In old conveyancing. The boundary lines of lands on the *ends*, as distinguished from those on the *sides*, which were called *sidings*. "*Buttals* and *sidings*, east, west, north and south." *Cro. Jac.* 183. See 1 *Leon.* 30.

BUTTED AND BOUNDED. A phrase sometimes used in conveyancing, to denote the boundaries of lands. See *Butts and bounds*.

BUTTS. [L. Lat. *butta*, from Fr. *bouts*, ends.] In old English law. Short pieces of land left unploughed at the *ends* of fields, where the plough was *turned about*, (otherwise called *headlands*,) as *sidelings* were similar unploughed pieces on the *sides*.* See *Capitia, Headlands, Sidelings*.

* * This word is very obscurely defined in the old books, "the ends or short pieces of lands in arable ridges and furrows." *Cowell.* A case in Littleton's Reports, however, clearly illustrates its meaning. A libel was filed in the court christian for tithes of hay, and the defendant showed that the hay was growing upon *headlands* and *butts* in cornfields. A prohibition was applied for, and allowed, the court holding that the defendant was discharged of tithe in this case by necessity, for it was relinquished by the *turning of the plough. Litt. R.* 13. *Butts* seem to have been untilled slips of land in the *ends* of fields, just as

balks (a term still used,) were similar untilled slips in the *body* of fields or commons. 2 *Steph. Com.* 9, note. *Brande, voc. Common.* Both words have the radical sense of a *stopping*, and *turning off*, or around. See *Butts and bounds*.

BUTTS AND BOUNDS. A phrase sometimes used in conveyancing, where a particular piece of land is described by enumerating the several lands or parcels which adjoin it, (or upon which it *abuts*) on the different sides. Properly, however, these words are descriptive of the *lines* which bound or circumscribe a piece of land, without reference to exterior objects, having nearly or quite the same sense as the more technical expression "*metes and bounds*." In lands of the ordinary rectangular shape, *butts* are the lines at the *ends*, (Fr. *bouts*,) and *bounds* are those on the *sides*, or *sidings*, as they were formerly termed. See *Buttals, Abuttals*. But in lands of irregular shape, *butts* are the angular points, or corners, where the boundary lines stop and turn in a new direction. This has been sufficiently explained under other heads. See *Abuttals, Butts, Boundary, Corner*. These distinctions, however, are generally disregarded in practice.

A further illustration of the true meaning of *butt* is derived from that of *mete*, which, according to Spelman, is its synonyme. *Mete* is from the Lat. *meta*, the goal of a race-course, or point at which some object was set up, (like a *butt* or mark to shoot at,) about which the course *turned*, or where it finally came to an *end*. *Spelman, voc. Abuttare*.

BUTTUM. L. Lat. In old records. A butt or measure of land; (*buttum terræ*.) *Carta M. de Sibbeford*, cited in *Blount*.

BUYING OF TITLES. The purchase of titles to land from parties not in possession. See 4 *Kent's Com.* 448—450. See *Champerty*.

BY. A common word in deeds and other instruments, having various senses, according to its application.

As expressive of the relative position of objects in space, *by* has the sense of nearness, or juxtaposition. As used in describing the boundaries of land, it sometimes denotes mere contact, answering to the words "to" or "on;" sometimes contact united with direction, or continued contact, answering to the word "along." "By land of" an adjoining owner means "along the external boundary line of that land."

19 *N. Hampshire R.* 273. And see further, as to the construction of the word, 16 *Maine R.* 245. 20 *Wendell's R.* 149. 3 *Sumner's R.* 170. 3 *Kent's Com.* 427—434, and notes. *Angell on Water-Courses*, § 23, *et seq.*

In its application to time, *by* has the sense of reaching or touching, without inclusion. "By a certain day" excludes that day. 3 *Penn. R.* 48.

In its application to persons, *by* has the sense of instrumentality or agency, answering to the Lat. *per*, through.

BY-BIDDING. Bidding on property offered for sale at auction, *by* or in behalf of the owner for the mere purpose of raising the price, or inducing others to bid higher. Sometimes called *puffing*. By-bidding by the owner, or caused by the owner, or ratified by him, has often been held to be a fraud, and avoids the sale. 8 *Howard's R.* 153, and cases cited *ibid.*

BY BILL, BY BILL WITHOUT WRIT. In practice. Terms anciently used to designate actions commenced by original *bill*, as distinguished from those commenced by original *writ*, and applied in modern practice to suits commenced by *capias ad respondendum*. 1 *Arch. Pr.* 2, 337. 5 *Hill's (N. Y.) R.* 213.

BY ESTIMATION. A phrase used in conveyances, in describing the quantity of land conveyed, where it is not precisely ascertained by measurement. See *More or less*.

BY GOD AND MY COUNTRY. In old English criminal practice. The established formula of reply by a prisoner, when arraigned at the bar, to the question "Culprit, how wilt thou be tried?" Mr. Barrington thinks the correct formula must originally have been, "By God or my country," i. e. by ordeal (the *judicium Dei*), or by jury; for the reason that the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. *Barringt. Obs. Stat.* 84, note [i]. But it is clear that in answering the question, the prisoner was expected to select one particular mode of trial, which the alternative expression contended for would not amount to. That the expression "By God" did not necessarily and exclusively import the ordeal, appears from the form of issue in cases of trial by the grand assise, which always was that the party put himself "on God and on the grand assise." See *Britt. c.* 48. *Yearb.*

(Additions after) T. 20 Hen. VI. 4. That every word of this formula was deemed essential, appears from several cases on record, in which the prisoner's replies—"By God and my good country," "By God and honest men," were severally rejected, and he was compelled to use the precise words of the form. 1 *How. State Trials*, 1143. 3 *Id.* 520. 6 *Id.* 75. 7 *Id.* 831. On the trial of John James for high treason, 13 Car. II. 1661, the prisoner requesting an explanation of the form, the judge said that "By God" meant "by the law of God," and "by the country," twelve Middlesex men of truth, that would judge impartially between the king and him. 6 *St. Trials*, 75.

BY-LAWS. [*L. Lat. bilagæ, bilagines, bellagines*, from *by*, a town.] Originally, the local laws of towns, or municipal corporations, as distinguished from the general laws of the land. See *Bilagines*.

Now generally used to signify the private laws or regulations made by any corporation for its own government; which are binding upon it if made in conformity with the general law of the land; otherwise they are void. 1 *Bl. Com.* 475, 476. 2 *Kent's Com.* 296, and note. *Angell & Ames on Corp.* 323, ch. 10.

BY-LAW MEN. In English law. The chief men of a town, representing the inhabitants. See 6 *Ad. & Ell. N. S.* 60.

BY THE BYE. [*Lat. obiter.*] In practice. Incidentally. A term formerly applied in English practice to a peculiar mode of declaring, as distinguished from declaring in chief. A declaration *in chief* was at the suit of the same plaintiff for the principal cause of action, or that for which the writ was sued out; a declaration *by the bye* was at the suit of a *different* plaintiff, or of the same plaintiff for a *different* cause of action, 1 *Tidd's Pr.* 419. The practice of declaring *by the bye* is now abolished. *Archb. New Pr.* 293.

C

C. The letter inscribed on the ballots by which, among the Romans, jurors voted to condemn an accused party. It was the initial letter of CONDEMNO, I condemn. *Tayl. Civ. Law*, 192.

C. The initial letter of the word *Codex*, used by some writers in citing the Code of Justinian. *Tayl. Civ. Law*, 24.

C is sometimes used for T, in old Latin

records. *Tercia pars totius terræ, for tertia and totius.* *Mag. Cart.* 9 Hen. III. c. 7.

CA. L. Fr. Here. *Ca et la*; here and there. *L. Fr. Dict.*

CABALLERIA. In Spanish law. A portion of spoils taken or lands conquered in a war, granted to a horse soldier. *Dict. Span. Acad.* 12 *Peters' R.* 444, note.

An allotment of land, being a lot of one hundred feet front and two hundred feet deep. 2 *White's Recop.* [38,] 49.

CABALLERO. Span. [from Lat. *caballus*, a horse.] In Spanish law. A knight. So called on account of its being more honorable to go on horseback (*à caballo*), than on any other beast. *White's New Recop.* b. 1, tit. 5, c. 3, § 3. *Id.* b. 1, tit. 5, c. 1. *Id.* b. 3, tit. 10, c. 1, § 6.

CABLISH. [L. Lat. *cablicium*, *cablicia*; Fr. *cables*, *cablia*.] In the forest law. Brush wood, or browse wood. *Crompt. Jur.* 163, 263. According to Spelman, wind-fallen wood, (*caduca ligna ventis dejecta*.) *Spelman*, voc. *Cablicia*. *Blount*.

CACICAZGOS. Span. In Spanish-American law. Property entailed on the *caciques*, or heads of Indian villages, and their descendants. *Schmidt's Civ. Law*, 309.

CADASTRE. Span. In Spanish law. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 12 *Peters' R.* 428, note.

CADERE. L. Lat. In old practice. To fall, fail, cease, or come to an end; to abate. *Cadit actio*; the action fails, or abates. *Bract.* fol. 308, 308 b. *Cadit appellum.* *Id.* 140 b, 141. *Cadit assisa.* *Id.* 192 b, 210 b. *Cadit breve.* *Id.* 161, 182 b. *Cadit loquela.* *Id.* 260 b, 363. *Cadit warrantia.* *Id.* 394. *Cadit quæstio*; (q. v.) there is an end of the question. The opposite of *stare*, (to stand,) and *tenere*, (to hold). *Aut stabit appellum aut cadet*; the appeal will either stand or fall. *Bract.* 140 b. *Et sic vel cadit breve omnino, vel stabit quantum ad quosdam, et cadet quantum ad alios*; and so the writ either abates altogether, or will stand good as to some, and abate as to the others. *Id.* fol. 414. *Cadit breve et assisa versus tales, licet teneat versus alios*; the writ and assise fails against such, though it holds against the others. *Id.* fol. 203. *Ubi cadit actio, ibi cadit breve*; where the action fails or abates, there the writ abates also. *Id.* fol. 414. See *Chet.*

Cadere à, or ab. To fail in, or be defeated; to lose. *Cadat ab actione sua et à causa*; he shall fail in his action and cause. *Bract.* fol. 280. *Cadit mulier à casu*; the woman loses her case. *Id.* 301 b. *Cadit à causa*; she loses her cause. *Fleta*, lib. 2, c. 61, § 16. *Cadat à causa sua*; he shall lose his cause. *Bract.* fol. 308 b. *Qui cadit à syllaba cadit à tota causa*; he who mistakes in a syllable, loses his whole cause. *Stat. Wales*, 12 *Edw.* I. 3 *Bl. Com.* 407. 2 *Reeves' Hist. Eng. Law*, 98. See *Bract.* fol. 211. Used in the same sense without the preposition. *Cadere causa*; to fail in, or lose one's cause, to be cast. *Cic. De Orat.* i. 36. *Inst.* 4. 6. 33. *Cadere assisa*; to be nonsuited. *Fleta*, lib. 4, c. 15. Literally translated in Scotch law, to fall from. "To fall from a right," is to lose or forfeit it. 1 *Kames' Equity*, 228.

Cadere in. To fall into; to become liable to; to be the subject of. *Cadit donatio in partem*; the gift becomes the subject of division, (or *venit in divisionem*, goes into a common stock, for the purpose of making a general division.) *Bract.* fol. 22. *Cadere in assisam*; to be the subject of an assise, as an agreement or covenant; to be sued for in that form. *Id.* 213 b. The same as *incidere.* *Id.* 213. To become liable to an assise, as a person or party; to be suable in that form. *Possunt plures cadere in assisam, sicut unus*; several defendants may be included in an assise as well as one. *Id.* fol. 172. The same as *incidere*, which is more frequently used. *Id.* fol. 170 b, 171.

Cadere in. To fall into; to be changed or turned into. *Cadit assisa in juratam*; the assise is turned into a common jury. *Bract.* fol. 213 b. *Cadit assisa, nec est capienda ut assisa, sed vertitur in juratam*; the assise falls, nor is it to be taken as an assise, but it is turned into a jury. *Id.* fol. 192 b. *Cadit assisa et vertitur in juratam.* *Id.* fol. 210 b. *Cadit assisa in perambulationem*; the assise is turned into a perambulation. *Id.* 180, 211 b. 1 *Reeves' Hist. Eng. Law*, 336.

CADIT. Lat. [from *cadere*, q. v.] In old practice. (It) falls, fails, abates.

Cadit assisa; the assise fails. The title of the fifteenth chapter of the fourth book of *Fleta*.

Cadit quæstio; the question falls, there is an end of the question. Bayly, J. 3 *M. & S.* 444. *Cadet quæstio.* Lord Ellenborough, 12 *East*, 381.

CADUCUS, *Caduca.* L. Lat. [from

cadere, to fall.] In the civil and old common law. Falling; fallen. *Caducus morbus*; the falling sickness. *Cowell. Caduca ligna*; fallen wood. *Spelman, voc. Cablicia. Glans caduca*; nuts or acorns that fall from the tree, (*quæ ex arbore cecidit*). *Dig. 50. 16. 30. 4.*

Escheated; falling or fallen to the state. *Partes caducæ*; escheated portions. *Dig. 5. 3. 20. 6, 7.*

CADUCA. L. Lat. [pl. of *caducum*, from *cadere*, to fall.] In the civil law. Escheats; escheated estates or lands. *Co. Litt. 13 a.* Those that fall to the state. See *Escheat*. See the title *De caducis tollendis*; *Cod. 6. 51.*

CADUCARY. [from *caducus*, q. v.] Relating to escheat, forfeiture or confiscation. *2 Bl. Com. 245.*

Having the character of escheat. "A sort of *caducary* succession." Lord Mansfield, *1 W. Bl. 163.*

CADUS. L. Lat. In old English law. A barrel. *Towns. Pl. 173. Decem cados olei. Bract. fol. 35.*

CÆDERE. Lat. In the civil law. To cut, (as trees); to cut down; to strike with the view of cutting down. *Dig. 47. 7. 5. pr.*

CÆDUA. Lat. [from *cædere*, to cut.] In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood. *Silva cædua est quæ in hoc habetur ut cæderetur; sylva cædua* is that kind of wood which is kept for the purpose of being cut. *Dig. 50. 16. 30.* According to Servius, it was that kind which, when cut down, grew up again from the trunks or roots. *Id. See Dig. 7. 1. 9. 7. Id. 7. 1. 10. 11. Id. 43. 24. 18.*

CÆSAR. Lat. In the Roman law. A cognomen in the Gens Julia, which was assumed by the successors of Julius. *Taylor's Civ. Law, 31.*

CÆTERIS TACENTIBUS. Lat. The others being silent; the other judges expressing no opinion. *Comb. 186.* A phrase in the old reports.

CAHIER. Fr. In old French law. A list of grievances prepared for deputies in the States General. *Steph. Lect. 254.*

A petition for the redress of grievances enumerated. *Id. 257.*

CAIUS. Lat. A Roman name, sometimes used for *Gaius*, (q. v.)

CALAMUS. Lat. A pen; writing or penmanship. *Stylum calami. Fleta, lib. 4, c. 10, § 3. Calami diversitas vel atra-*

menti; difference of writing or of ink. *Id. § 4.*

CALANGIUM, *Calangia*. L. Lat. [from Fr. *calanger*.] In old English law. A challenge; a claim or dispute. *2 Mon. Angl. 252. Cowell. Blount. Spelman, voc. Calumnia.*

CALAPHATES. Græco-Lat. A ship's carpenter or shipwright. *Molloy de Jur. Mar. 243.*

CALASNEO. In old European law. One who possessed land adjoining another, or having a common boundary with another, (*conterminus*.) *L. Baiwar. tit. 21, § fin. Spelman.*

CALATA COMITIA. See *Comitia Calata*.

CALCARIA. L. Lat. In old English law. Spurs. *Bract. fol. 35.*

CALCEATA, *Calcetum, Calcea*. L. Lat. [Fr. *chaussee*.] In old English law. A cause-way, or causey; a path or road raised with earth and paved; (*agger, via strata*.) *Spelman. Cowell, voc. Calcea.*

CALCETUM. L. Lat. In old English law. A cause-way. *Reg. Orig. 154. Fleta, lib. 2, c. 52, § 33. See Calceata.*

CALCIFURNIUM. L. Lat. In old European law. An oven for burning lime, (*furnus ad coquendam calcem*;) a lime-kiln. *Spelman.*

CALE. Fr. In old French law. A species of punishment inflicted upon sailors, by plunging into the water, and drawing up again. *Ord. Mar. liv. 2, tit. 1, art. 22.* The modern keel-hauling. (†)

CALEFAGIUM. L. Lat. In old records. A right to take fuel yearly. *Cowell. Whishaw.*

CALENDAR, *Kalendar*. [L. Lat. *calendarium*, from *calendæ*, q. v.] The established division of time into years, months, weeks and days. "The calendar is settled by law, and is part of the law." *Holt, C. J. 6 Mod. 252.*

A table or register of such divisions. *Encyclop. Americ. Brande.*

CALENDARIUM. L. Lat. A calendar. See *Calendar*.

CALENDAR (or Solar) MONTH. A month computed according to the calendar, and containing thirty or thirty-one days, except February, which contains twenty-eight days, and in the bissextile or leap year, twenty-nine. *Co. Litt. 135 b. Stat. 16 Car. II. c. 7. Com. Dig. Ann. (B). 3 Chitt. Gen. Pract. 108. 4 Kent's Com. 95, note. See Month.*

CALENDAR OF CAUSES. In practice. A list of litigated causes, prepared by the clerks of courts of record, a short time previous to the commencement of each term or sittings, containing the title of each cause, the nature of the action, the date of the issue, and the names of the attorneys for the respective parties. It is intended for the use of the court and bar, on the trial or hearing. In English practice, it is termed the *list*, or *paper*. 2 *Tidd's Pr.* 818, 819. 1 *Id.* 504. In some of the United States, it is called *docket*. See *Docket*.

CALENDAR OF PRISONERS. In English practice. A list kept by the sheriffs, containing the names of all the prisoners in their custody, with the several judgments against each in the margin. *Staundf. Pl. Cor.* 182. 4 *Bl. Com.* 403.

CALENDÆ, Kalendæ. Lat. [from O. Lat. *calo*, Gr. *καλεω*, to call.] In the Roman law. *Calenda*. See *Calends*.

CALENDs. [Lat. *calendæ*.] The first day of the month in the Roman calendar; so termed from the custom of a priest *calling out*, or proclaiming to the people on that day, the month with the festivals occurring in it, and the time of the new moon. *Adam's Rom. Ant.* 335. *Encyclop. Americ.* 2 *Inst.* 675. *Cowell*.

CALFATEUR. Fr. In French marine law. A ship-caulker. *Ord. Mar.* liv. 2, tit. 9, art. 1.

To **CALL**. In American land law. To require a natural object, as a tree or stream, to correspond with a description or map in a survey, patent or grant of land; to designate a natural object as a landmark or boundary in patents, grants and surveys. Thus, a survey is said to "call for, as the place of beginning, a black oak on the state line." 2 *Binney's R.* 169. 2 *Penn. St. R.* 44. A grant is said to "call for two small chestnut oaks," "to call for a corner," &c. 3 *Peters' R.* 92—98. "The grant calls to be on the waters of Tygart valley." *Marshall, C. J. Id. ibid.* A deed of a city lot is said to "call for an alley." 4 *Ohio St. R.* 542, 543.

To designate courses and distances, as well as visible objects. 3 *Jones' Law R.* 496. 11 *Grattan's R.* 136, 157.

CALL. In American land law. The designation, in an entry, patent or grant of lands, of a visible natural object, as a limit or boundary; such description *calling* for the object, or requiring it to be actually

found upon the land, in order to render the entry, &c., effectual; the object, when found, being said to "fit the calls" of the entry. 2 *Bibb's R.* 119. 4 *Id.* 380, 109. The designation of courses and distances, as well as visible objects. 16 *Georgia R.* 141. 11 *Grattan's R.* 136, 157. "The call of the deed is 'Beginning on the line of a survey made,' &c., 'running thence,' &c." 10 *Id.* 445. "In all, fourteen calls." 11 *Id. ub. sup.*

Calls are of two kinds, general and special; the former serving to guide and direct to the latter, which are termed *locative calls*, (q. v.) 2 *Bibb's R.* 117, 145. 3 *Id.* 414. See *Locative calls*.

CALLING THE PLAINTIFF. In practice. A formality practised in courts, on the trial of a cause before a jury, as preliminary to nonsuiting the plaintiff. It is usual in English practice, for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or to withdraw himself; whereupon the crier is ordered to *call the plaintiff*; and if neither he, nor any body for him, appears, he is nonsuited, the jurors are discharged, the action is at an end, and the defendant shall recover his costs. 3 *Bl. Com.* 376. Hence the phrase has become synonymous with *nonsuiting* the plaintiff. "The plaintiff must be called;" that is, must be nonsuited. See the reports *passim*. The practice of calling the plaintiff to hear the verdict was dispensed with in the Supreme Court of New-York, in 1847. *S. C. Rules*, ed. 1847, R. 46.

CALLING A SUMMONS. In Scotch practice. See this described in *Bell's Dict.*

CALLING TO THE BAR. In English practice. Conferring the dignity or degree of barrister at law upon a member of one of the Inns of court. *Holthouse*.

CALPE, Caupe. In old Scotch law. A gift of a horse, or other thing, made by a man in his lifetime and liege poustie, (lawful power,) to the chief of his clan or other superior, for his maintenance and protection, and which was delivered immediately after his decease. *Skene de Verb. Sign. voc. Caupes*. A species of herezeld, (q. v.)

CALUMNIA, Calumpnia. L. Lat. In old English law and practice. A claim, or demand; (*vindicatio*, L. Lat. *clameus*.) *Spelman*. The demand of a right in any thing;

(*juris in re aliqua postulatio.*) *Id.* See *Calumpnia*.

A challenge. *Spelman. Reg. Orig.* 223, 224. *Co. Litt.* 155 b. *Crabb's Hist. Eng. Law*, 299.

In feudal law. An objection. *Feud. Lib.* 2, tit. 1.

CALUMNIA. Lat. In the civil law. Calumny, malice, or ill design; a false accusation; a malicious prosecution. *Inst.* 4. 16. 1. *Cooper's Notes. Dig.* 3. 6. *Cod.* 9. 46.

Calumniæ jusjurandum; the oath of calumny. An oath imposed upon the parties to a suit, that they did not sue or defend with the intention of calumniating, (*calumniandi animo*.) i. e. with a malicious design, but from a firm belief that they had a good cause. *Inst.* 4. 16. The same oath, under the name of *juramentum calumniæ*, was formerly practised in the canon law, but is now disused. 4 *Reeves' Hist. Eng. Law*, 16. *Cooper's Justinian*, Notes, 649. It was also used in admiralty practice. *Clerke's Prax.* tit. 42.

CALUMNIARE, Calumpniare. L. Lat. In old English law and practice. To claim or demand, (*vindicare, clamare.*) *Spelman.*

To object to. *Imprimis calumpniari poterit summonitio*; in the first place, the summons may be objected to. *Fleta*, lib. 2, c. 54, § 1. *Calumniata, calumpniata*; objected to. *Bract. fol.* 257, 334.

To challenge. *Ut omnes juratores in pannello calumpniare possit*; that he might be able to challenge all the jurors in the panel. *Reg. Orig.* 223. See *Stat. Westm.* 2, c. 32. *Co. Litt.* 155 b. *Calumpniavit arraiamentum panelli*; he challenged the array of the panel. *Dyer*, 37 b. (Fr. ed.)

CALUMNIARE. Lat. [from *calumnia*.] In the civil law. To calumniate, or maliciously injure; to accuse falsely. *Inst.* 4. 16. 1. See *Calumnia, Calumniator*.

CALUMNIATOR. Lat. [from *calumpniare*, q. v.] In the civil law. One who accused another of a crime without cause; one who brought a false accusation. *Cod.* 9. 46.

CALUMPANIA. L. Lat. In old English law. Challenge or claim. *Sine calumpnia.* *Fleta*, lib. 2, c. 51, §§ 8, 9.

An objection or exception. *Ostensuri in hac parte rationes suas et calumpnias, si quas habuerint*; to show, in this behalf, their reasons and objections, if any they had. *Claus.* 28 *Edw. I. m.* 3, d.

CALUMPNIOSUS. L. Lat. In old

practice. That may be challenged or objected to; objectionable. *Bract. fol.* 398 b.

CAMARA. Span. [from Lat. *camera*, q. v.] In Spanish law. A treasury. *Las Partidas*, part 6, tit. 3, l. 2.

The exchequer. *White's New Recop.* b. 3, tit. 8, ch. 1.

CAMBELLANUS. L. Lat. In old law. A chamberlain. *Spelman.*

CAMBIATOR. L. Lat. [from *cambiare*, q. v.] In old English law. An exchanger. *Cambiatores monetæ*; exchangers of money; money-changers. *Fleta*, lib. 1, c. 22, § 7.

CAMBIO. Span. In Spanish law. Exchange. *Schmidt's Civ. Law*, 148.

CAMBIPARTIA, Cambipartita. L. Lat. [from *campus*, a field, and *partiri*, to divide.] In old English law. Champerty. *Co. Litt.* 368 b. *Spelman*, voc. *Cambiparticeps*. See *Champerty, Campers*.

CAMBIPARTICEPS, Cambipartitor. L. Lat. (See *Cambipartia*.) In old English law. A champertor; one who promotes, undertakes or maintains another's suit, in order to obtain a stipulated share of the land or other thing that may be recovered; (*ad campi partem, vel pro parte lucri habendum.*) *Stat. de Conspiratoribus*, 33 *Edw. III.* *Spelman.* See *Champertor*.

CAMBIRE. L. Lat. In old English law. To change or exchange. *Cambire denarios.* *Ryl. Parl.* 527. *Towns. Pl.* 58.

CAMBIST. In mercantile law. A person skilled in exchanges; one who trades in promissory notes, and bills of exchange. *Wharton's Lex.*

CAMBITORIA. L. Lat. [from *cambium*, q. v.] In old pleading. Of, or relating to exchange. *Litteræ cambitoria*; a bill of exchange. *Towns. Pl.* 58.

CAMBIUM, Escambium. L. Lat. [Ital. and Span. *cambio*.] In old European law. Change or exchange; (*permutatio*.) *Feud. Lib.* 1, tit. 4, § 3. *Id.* lib. 2, tit. 2, 5. *Grot. de Jur. Bell.* lib. 2, c. 12, § 3, par. 4. *Molloy De Jur. Mar.* 309, 313. *Towns. Pl.* 58. See *Escambium, Chambium*.

A bill of exchange. *Per cambium, intelligimus litteras solemnī formula scriptas, quibus quis alterum solvi jubet præsentanti certam pecunie summam, sibi jam numeratam, suoque nomine satisfactionem promittit*; by exchange we mean a formal letter in writing, by which one orders another to pay to him who presents it, a certain sum of money, already received in value, and

promises satisfaction in his own name. *Heinec. Elem. Jur. Camb.* c. 1, § 9. *Story on Bills*, § 4.

CAMBOCA, *Cambuca*. L. Lat. In old ecclesiastical records. A crozier; a bishop's pastoral staff. *Spelman*.

CAMBRA. L. Lat. An old form of *Camera*, (q. v.) *Spelman*.

CAMERA. L. Lat. [Lat. *camera*, a vault, or arched roof; an upper gallery; Span. *camara*.] In old European law. A chamber; an apartment in a dwelling-house. *Facio tibi aulam, ut tu facias mihi cameram*; I make you a hall, in consideration of your making me a chamber. *Bract.* fol. 19. *Camera dividitur ab aula*; a chamber is separated from a hall. *Id.* fol. 76. *Non debet exire cameram*; he ought not to go out of the chamber. *Id.* fol. 357 b, c. 12. *Reg. Jud.* 13.

A treasure chamber, or treasury; a chamber with a vaulted roof, for the keeping of the public treasure; (*locus in quem inferantur mulctæ et thesaurus principis*.) *Spelman*, voc. *Cambellanus*. This is the definition of the feudists, and other early writers. *Locus in quem thesaurus colligitur*. *Zasius de Feudis*, par. 4, num. 7. *Testudo sive fornix*. *Onuphrius de Interp. Voc. Ecclesiæ*, cited in *Cowell*, voc. *Chamberlain*. Hence the modern vault, as a place of deposit for money. See *Camerarius*, *Chamberlain*, *Camara*.

A private treasury; a place for keeping private funds or moneys; a coffer; personal funds, as distinguished from land. *Feudum de camera*; a fee or fief from the chamber or coffer; a pecuniary stipend paid to a vassal by his lord. *Feud. Lib.* 2, tit. 1, § 1. *Id. Lib.* 2, tit. 2, § 1. *Id.* tit. 58. *Hotom. de Verb. Feud.* An annuity is distinguished from a rent, (although both are termed in Latin *annuus redditus*, q. v.) as issuing or payable *ex camera*, and not *ex tenemento*. *Bract.* fol. 79 b, 180, 184, 203 b. *Fleta*, lib. 2, c. 62, § 15. *Reg. Orig.* 266. See *Annuity*.

A crooked plat, or nook of ground. *Dufresne*, cited in *Cowell*. The editor of *Cowell* (A. D. 1701,) makes this the original meaning of the word, deriving it from the Germ. *kam*, or *kammer*, crooked. But *kammer* seems to have always denoted a vaulted chamber. *Encyclop. Americ.* voc. *Chamber*.

In old English practice. A judge's chamber. *Dyer*, 59 b, (Fr. ed.) *Id.* 140 b.

CAMERA REGIS. L. Lat. In old

English law. A chamber of the king; a place of peculiar privileges, especially in a commercial point of view. The city of London was so called. *Yearb.* P. 7 Hen. VI. 27. *Brownl.* part 2, 289. *Calthrop's R.* 48, 56. See *Chambers*.

CAMERA SCACCARI. L. Lat. In old English law. The chamber of the exchequer; the Exchequer Chamber. See *Exchequer chamber*.

CAMERA STELLATA. L. Lat. The Star Chamber. See *Star chamber*.

CAMERARIUS. L. Lat. [from *camera*, a chamber or treasury.] In old European law. A chamberlain; a keeper of the treasure chamber; a keeper of the public money; a treasurer. *Peregrinus de Jure Fisci*, lib. 6, tit. 13, cited in *Cowell*, voc. *Chamberlain*. *Camerarius dicitur a camera*, i. e. *testudine sive fornice, quia custodit pecunias quæ in cameris præcipue reservantur*. *Onuphrius de Interp. Voc. Ecclesiæ*, cited *ibid.* See *Spelman*, voc. *Cambellanus*. *Towns. Pl.* 48. Used in this sense in England, in the times of the Anglo-Saxons. *Ealred in vit. S. Edw. Conf.* c. ii. p. 9, cited, *P. Cyclopædia*. It occurs also in the Domesday Survey. *Ibid.*

In old English law. A chamberlain; an officer who had the charge of the royal chambers or apartments, and whose office was quite distinct from that of the treasurer, (*thesaurarius*). His duties are described in *Fleta*, lib. 2, cc. 6, 7.

A bailiff or receiver. *Stat. Westm.* 2, c. 11. 2 *Inst.* 380.

CAM. SCACC. An abbreviation of *Camera Scaccarii*, (q. v.)

CAMINO. Span. [Fr. *chemin*.] In Spanish law. A high road; a highway. *White's New Recop.* b. 2, tit. 1, c. 5.

The right of road or way. *Id.* b. 2, tit. 6, c. 1.

CAMPANA. L. Lat. In old European law. A bell. *Spelman*.

Campana bajula; a small hand-bell used in the ceremonies of the Romish church; and among protestants, by sextons, parish clerks, and criers. *Cowell*.

CAMPANARIUM, *Campanile*. L. Lat. [from *campana*, q. v.] A belfry, bell tower or steeple; a place where bells are hung. *Spelman. Towns. Pl.* 191, 213.

CAMPARTUM. L. Lat. In old records. A part or portion of a larger field or ground. Champerty; a share or division of what would otherwise be in gross or

common. *Prynne, Hist. Coll.* vol. iii. p. 89. *Cowell.* See *Campers*.

CAMPERS, Campipars. L. Lat. [Fr. *champert*.] In old English statutes. A share or division of land, or other thing; champerty. *Nullus minister domini regis manuteneat placita vel querelas in curia sua, ad campertem inde habendum*; No servant of the king shall maintain pleas or complaints in his court, to have *champert* thereof. *Rot. Parl.* 21 *Edw.* I, cited in *Blount*. This corresponds with the Fr. *ne à champert*, in the first English statute of champerty. *Stat. Westm.* 2, c. 49. 2 *Reeves' Hist. Eng. Law*, 212. See *Champerty*.

CAMPERTUM. L. Lat. In old records. A corn-field; a field of grain. *Pet. in Parl.* 30 *Edw.* I. *Blount*.

CAMPFIGHT. In old English law. The fighting of two champions (*campiones*), or combatants in the field, (*campus*;) the judicial combat, or *duellum*. 3 *Inst.* 221. See *Acre-fight*.

CAMPIO. L. Lat. [from *campus*, q. v.] In feudal and old English law. A champion. *Bract.* fol. 344. *Spelman*, voc. *Campus*. In old Scotch, a champion. *Skene de Verb. Sign.* voc. *Campiones*. One that striketh a legal camp-fight, or combat in another man's quarrel. 3 *Inst.* 221. See *Champion*. *Campio conductivus*; a hired champion. *Bract.* fol. 137 b. *Fleta*, lib. 1, c. 38, § 8.

CAMPSORES. L. Lat. [from *cambium*, exchange.] In old European law. Exchangers; Lombard or Italian merchants. 1 *Rob. Charles V.* Appendix, Note xxx.

CAMPUS. Lat. [Fr. *champ*.] In old European law. An assembly of the people; so called from being anciently held in the open air, in some *plain* capable of containing a large number of persons. 1 *Rob. Charles V.* Appendix, Note xxxviii.

CAMPUS. Lat. In feudal and old English law. A field, or plain. The field, ground or lists marked out for the combatants in the *duellum*, or trial by battle. *Hottoman. in Verb. Feud.* voc. *Campio*.

The *duellum*, or combat itself; camp-fight. *Spelman. Cowell*, voc. *Champion*. See *Acre-fight*. *Spelman* gives an elaborate account of the trial by battle under this head.

CAMPUS MAIL. L. Lat. The field of May. An anniversary assembly of the Saxons, held on May-day, when they confederated for the defence of the kingdom against all its enemies. *LL. Edw. Conf.* c. 35. *Wharton's Lex.*

CAMPUS MARTII. L. Lat. The field of March. See *Champ de Mars*.

CANCELLARE. L. Lat. [from *cancelli*, q. v.] In old records. To lay or place crosswise. *Cancellare manus*; to cancel late the hands; to lay them across each other. *Cowell*.

CANCELLARIA. L. Lat. [from *cancellarius*, q. v.] In old English law. Chancery; the chancery; the court of chancery. 3 *Bl. Com.* 46. The office from which all writs were anciently issued, the chancellor being the keeper of the great seal under which the writs passed. *Fleta*, lib. 2, cc. 13, 29. *Clerici de cancellaria*; the clerks of the chancery. *Stat. Westm.* 2, c. 24.

CANCELLARIUS. L. Lat. [from *cancelli*, q. v.] An officer in the lower Roman empire, otherwise called *scriba*, *notarius*, *graphiarius*, *secretarius*, *scriniarius*, à *cancellis*, à *secretis*, ab *actis*, à *libellis*, anti-graphus, *logothetes*, and *caniclinus*. *Spelman*. A scribe, secretary, register, notary; a chancellor. See *Chancellor*.

* * This term had originally no connection with courts of justice, or the cancelling of instruments. It first occurs in the history of Flavius Vopiscus, A. D. 287, and was the name of an officer of very humble rank, viz. an usher or doorkeeper, who had the charge of the *cancelli*, or latticed doors leading to the presence chamber of the emperors. *Vopisc. Hist. Aug. Scrip.* vol. ii. 300. *Salmas. ad Id.* vol. ii. 796, note. *Ducange*, voc. *Cancellarius*. 1 *Wooddes. Lect.* 95. 1 *Gibbon's Rom. Emp.* (c. 12,) 193, note, (Am. ed.) The name was afterwards applied to the secretaries, scribes, notaries, or registers, who attended on the emperors and principal judges, and sat in a separate place, enclosed with a partition of *cancelli*, or lattice work, (*seclusi à turba molestiis, inter cancellos agerent*.) *Spelman. Vopisc. Hist.* vol. ii. 797, 804. *Cod.* 1. 51. 1 *Wooddes. Lect. ub. sup.* See *Cancelli*. In the course of time, one of these *cancellarii* gained a precedence above the rest, and rose to a high degree of rank and power, as appears from the description given by *Cassiodorus*. Lib. 11, form. 6; Lib. 12, form. 1. The ordinary part of his function at this time seems to have been to receive petitions and supplications addressed to the throne, and to frame and issue the imperial writs and mandates. 1 *Wooddes. Lect.* 96. From the Roman empire, the name and office of *cancellarius*, or chancellor, passed to the

Romish church; and were finally adopted by the courts of most of the states of Europe. *Id. ibid. Spelman. 3 Bl. Com. 46.* The first mention of the chancellor, as a public officer in England, is in the time of Edward the elder, about A. D. 920. *Ingulph. apud Spelman. 1 Spence's Chancery, 78, and notes.*

CANCELLARIUS. L. Lat. In old English law. Chancellor; a chancellor. *Bract. fol. 338 b. 403 b. Fleta, lib. 2, cc. 13, 27, 29. Id. c. 64, §§ 6, 7. Cancellarius de scaccario*; chancellor of the exchequer. *Id. c. 27. Cancellarius et subthesaurarius scaccarii domini regis*; chancellor of the exchequer. *Towns. Pl. 209. Cancellarius ducatus et comitatus palatini domini regis Lanc'*; chancellor of the duchy of Lancaster. *Id. 210. Officium cancellarii est sigillum regis custodire simul cum controrotulis suis de proficuo regni*; it is the office of the chancellor to keep the king's seal, together with the counter-rolls of the profit of the realm. *Fleta, lib. 2, c. 29.*

CANCELLATURA. L. Lat. In old English law. A cancelling. *Bract. 398 b. Rasura vel cancellatura. Fleta, lib. 6, c. 34, § 5.*

CANCELLI. Lat. Bars laid across each other. Lattices, or windows made with bars laid cross-wise, one over another. Enclosures in courts, composed of such cross-bars, to keep off the press of the people, without obstructing their view of the court, (*ingressum prohibentes, non visum.*) *Spelman, voc. Cancellarius. Cassiodorus, lib. 11, form. 6.*

* * The use of *cancelli*, in the sense of a railing or enclosure in courts, occurs as early as the time of Cicero. *De Orat. i. 12.* *Spelman* says the bars of courts (*barre*.) were formerly called *cancelli*, and the advocates who pleaded there *cancellarii*, (citing *Budæus*;) the space within the bar was called *cancellorum area*. See *Bar*. A *cancellis curiæ explodi*; to be expelled from the bar. *Spelman, ub. sup.* These *cancelli* are otherwise called by this writer *fenestratæ partitiones*, partitions with windows. So *Cassiodorus* speaks of them as *lucidæ fores*, (transparent doors,) *claustra patentia*, (open barriers,) *fenestratæ januæ*, (windowed gates.) *Cassiod. ub. sup.*

CANCELLING. The defacing or obliterating a deed, will, or other instrument, so as to destroy its legal effect. This was anciently done, as it still frequently is, by drawing lines diagonally over it, and cross-

ing them with other similar lines, in the form of *cancelli*, or lattice work. 2 *Bl. Com. 309.* See *Cancelli*. But it has been held in England, under the statute 1 Vict. c. 26, that *cancelling* a will in this way does not amount to a revocation or destruction of it. 2 *Curt. 458. Worthington on Wills, 560.*

CANFARA. L. Lat. In old records. A trial by hot iron, formerly used in England. *Whishaw.*

CANNA. In old records. A rod, in measures of ground or distance. *Cowell.* "CANNOT," construed "may not." Lord Ellenborough, C. J. 8 *East, 416.*

CANON. [from Gr. κανών.] A law, rule or ordinance in general, and of the church in particular. *Jacob.*

CANON. In the civil law. A rent. 1 *Mackeld. Civ. Law, 357, § 324. Id. 356, Kaufman's note.* See *Emphyteusis*.

In old records. A prestation, pension, or customary payment. *Cowell.*

CANON. [L. Lat. *canonicus*.] In English ecclesiastical law. A prebendary or member of a chapter. 1 *Bl. Com. 382. 3 Steph. Com. 67.* A person possessing a prebend or revenue allotted for the performance of divine service in a cathedral or collegiate church. *Encyclop. Amer.* By the statute 3 & 4 Vict. c. 113, s. 1, it is provided that all the members of chapters, except the dean, in every cathedral and collegiate church in England, shall be styled *canons*. 3 *Steph. Com. 67, note (m).*

CANONICUS. L. Lat. In old English law. A canon. *Fleta, lib. 2, c. 69, § 2.*

CANONRY. In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. *Holthouse. 1 Man. & Gr. 625.*

CANON LAW. [Lat. *Jus Canonicum*, or *Corpus Juris Canonici*.] A collection of ecclesiastical constitutions for the regulation of the polity and discipline of the church of Rome, consisting, for the most part, of ordinances of general and provincial councils, decrees promulgated by the popes with the sanction of the cardinals, and decretal epistles and bulls of the popes. 1 *Bl. Com. 82. P. Cyclopædia.*

The *Corpus Juris Canonici* consists, in particular, of the collections called *Gratian's decree*, (*Decretum Gratiani, q. v.*); *Gregory's decretals*, (*Decretalia Gregorii Noni, q. v.*); the sixth decretal, or *Sext*,

(*Sextus Decretalium*, q. v.); the Clementine constitutions, (*Clementinae*, q. v.); and the Extravagants of John, (*Extravagantes Joannis*), and his successors, (*Extravagantes communes*, qq. v.) 1 *Bl. Com.* 82. It was at first only a private collection, and was confirmed by Pope Gregory XIII. in the year 1580. 1 *Mackeld. Civ. Law*, 81, § 93, *Kaufman's note*.

CANON LAW OF ENGLAND. A kind of national canon law, composed of legatine and provincial constitutions enacted in England prior to the reformation, and adapted to the exigencies of the English church and kingdom.* 1 *Bl. Com.* 82. See *Legatine constitutions, Provincial constitutions*. At the time of the Reformation, it was provided by statute 25 Henry VIII. c. 19, that a review should be had of the canon law; and, till such review should be made, all canons, constitutions, ordinances and synodals provincial, being then already made, and not repugnant to the law of the land, or the king's prerogative, should still be used and executed. As no such review, however, was ever perfected, the authority of the canon law in England now depends upon this statute. 1 *Bl. Com.* 83. See 4 *Reeves' Hist. Eng. Law*, ch. xxiv. xxv. 5 *Co. Caudrey's case*. Lord Thurlow, C. 2 *Dick.* 716. 1 *Story's Eq. Jur.* § 279, note.

CANON RELIGIOSORUM. Lat. In ecclesiastical records. A book wherein the religious of every greater convent had a fair transcript of the rules of their order, frequently read among them as their local statutes. *Kennett's Gloss.* *Cowell.*

CANONS OF INHERITANCE. The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 *Bl. Com.* 208. 1 *Steph. Com.* 359. 2 *Crabb's Real Prop.* 1015, § 2394, *et seq.* 4 *Kent's Com.* 374—412. 2 *Hilliard's Real Prop.* 194—208.

CANTABR'. An abbreviation of *Cantabrigia*, or Cambridgeshire, in old English pleadings and records. 1 *Instr. Cl.* 28. *Towns. Pl.* 147.

CANTARIA. L. Lat. [from *cantare*, to chant.] In old English law. A chantry. *Fleta*, lib. 3, c. 5, § 10.

CANTEL. [L. Lat. *cantellum*, velut *quantillum*.] In old English law. That which is added above measure; heaped measure. *Spelman.* *Blount.*

CANTRED, Cantref, Cantrep, Kantref.

[L. Lat. *cantredus, cantaredus*; from Brit. *cant*, a hundred, and *tre*, a town.] In old records. A district containing a hundred villages; a hundred. *Spelman*, voc. *Cantredus*. In Wales, the counties were divided into *cantreds*, as in England into hundreds. *Cowell*, voc. *Cantred, Falco. Termes de la Ley.* *Blount*, voc. *Kantref.*

CANUM. L. Lat. [from Celt. *can, chan*, or *kain*, a head.] In old Scotch law. A tribute or duty paid by the tenant of land to the lord, especially to ecclesiastical superiors. According to Skene, it was payable either in the produce of the land, or in money. *Skene de Verb. Sign.* But it seems to have been generally paid in produce, such as wheat, oats, poultry, &c. The Scotch word was *cane* or *kain*; and the expressions "*cane fowls*," "*cane cheese*," "*cane oats*," are frequently made use of. See *Kain*.

CAPA, Cappa. L. Lat. In old records. A covering for the head; a cap. *Spelman.*

A garment, or covering for the body; a cope. *Id.*

A box for preserving relics. *Id.*

CAPACITY. [Lat. *capacitas*, from *capaz*, able to take.] Strictly, ability to take.

Ability or power given by law to take or dispose. *Hale's Anal.* sect. i. The legal ability or power of an individual or corporation to do certain acts, as to give or take lands or other things; or to bring actions, &c.* 2 *Bl. Com.* 290. *Termes de la Ley.* *Cowell.* See *Story's Conf. Laws*, ch. iv.

CAPAX. Lat. [from *capere*, to take.] One who takes or holds. *Capaces*; takers or holders. *Bract.* fol. 67 b.

One who can take, hold or entertain; capable of. See *Doli capax*.

CAPE. Lat. (Take.) In old English practice. A judicial writ concerning lands or tenements, formerly in use in England, and so termed from the emphatic word with which it began:—*Cape in manum nostrum tertiam partem messuagii*, &c.; (Take into our hand the third part of a messuage, &c.) It was divided into *cape magnum*, or *grand cape*, which lay before appearance; and *cape parvum*, or *petit cape*, which lay after appearance. *Termes de la Ley.* *Cowell.* *Reg. Jud.* 2, 2 b. See *Grand cape*, *Petit cape*, *Magnum cape*, *Parvum cape*.

CAPE AD VALENTIAM. L. Lat. (Take to the value.) A species of *cape magnum*, (*supra*), which issued in behalf

of the tenant, where a vouchee made default, on the return of the summons against him, and the demandant recovered; the writ commanding the sheriff to *take* as much land of the vouchee as was equal to the value of the land in question. *Bract*. fol. 258 b, 299 b. *Old Nat. Brev.* 161, 162. *Cowell. Termes de la Ley.* 1 *Reeves' Hist. Eng. Law*, 440, 441. *Reg. Jud.* 2. See *Vouchee*.

CAPELLA. L. Lat. [from *capa*, q. v.] In old records. A box, cabinet or repository in which were preserved the relics of martyrs. *Spelman*.

A small building in which relics were preserved; an oratory or chapel. *Id.*

In old English law. A chapel. *Fleta*, lib. 5, c. 12, § 1. *Spelman. Cowell*.

CAPELLARE, *Capulare*. L. Lat. In old European law. To cut, break or tear off; (*incidere, frangere, radere.*) *Spelman*.

CAPELLUS. L. Lat. In old English law. A cap. *Capellus ferreus*; a steel cap; a helmet or head-piece. *Fleta*, lib. 1, c. 24, § 12.

CAPERE. Lat. In the Roman law. To take; to take with effect, (*cum effectu*). *Dig.* 50. 16. 71. pr. To take effectually; to take with the intention of holding or keeping; to *accept*, as distinguished from *receive*. A distinction was made between this word, and *accipere*, (*aliud est capere, aliud accipere*); it not being properly applicable to cases where a restitution or redelivery of the thing taken was contemplated or required; (*non videtur quis capere quod erit restitutus*). *Dig.* 50. 16. 71. *Non videtur quisquam id capere quod ei necesse est alii restituere.* *Id.* 50. 17. 51.

CAPERE. Lat. In old English law and practice. To take; to seize or arrest. See *Capias*.

To take or receive judicially; to receive the verdict of an assise or jury; to hold courts at which such verdicts were given. *Qui cum militibus comitatum, capiant in comitatibus assisas predictas*; who, together with the knights of the shires, shall take in the counties the assises aforesaid. *Mag. Cart.* 9 Hen. III. c. 12. *Capiatur veredictum juratorum*; the verdict of the jurors shall be taken. *Fleta*, lib. 1, c. 41, § 6.

CAPIAS. Lat. (You take—*Quod capias*; that you take.) In practice. A judicial writ in actions at common law, so termed from the emphatic word in it, when the proceedings were in Latin, command-

ing the sheriff to *take* or arrest the party named in it. *Præcipimus tibi quod capias A. &c. Reg. Jud.* 1 b. The two principal kinds of *capias* are the *capias ad respondendum*, and the *capias ad satisfaciendum*, (qq. v.)

CAPIAS AD AUDIENDUM JUDICIUM. L. Lat. (You take—to hear judgment.) In English practice. A writ which is awarded and issued to bring in a defendant who has been found guilty of a misdemeanor, to receive his judgment. 4 *Bl. Com.* 375. 4 *Steph. Com.* 436.

CAPIAS AD RESPONDENDUM. L. Lat. (You take—to answer.) In practice. A well known writ, (usually simply termed a *capias*), by which actions at law are frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 *Bl. Com.* 282. 1 *Tidd's Pr.* 128. *Arch. New. Pr.* 219. The form of this writ has been considerably modified in England by the Uniformity of Process Act, 2 Will. IV. c. 39; and is now only issued after the suit has been actually commenced by summons, where an arrest of the defendant is required. *Stat.* 1 & 2 *Vict.* c. 110. *Chitt. Arch. Pr.* 461. *Wharton's Lex.*

The *capias*, in its original form, ran thus: *Rex vicecomiti salutem. Præcipimus tibi quod CAPIAS A. si inventus fuerit in balliva tua, et eum salvo custodias, ita quod habeas corpus ejus coram justitiariis nostris apud Westmonasterium, (tali die,) AD RESPONDENDUM B. de placito quod, &c. Et habeas ibi hoc breve. Teste, &c. Reg. Jud.* 1 b. The modern English writ was, down to a recent period, a literal translation of this form; and, with some modifications, it has hitherto generally been adopted in American practice.

The *capias* was originally called a *habeas corpus*, from these words used in it. 2 *Reeves' Hist. Eng. Law*, 439.

CAPIAS AD SATISFACIENDUM. L. Lat. (You take—to satisfy.) In practice. A writ of execution, (usually termed, for brevity, a *ca. sa.*) which a party may issue after having recovered judgment against another, in certain actions at law. It commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the party by whom it is issued, the damages, or debt and dam-

ages recovered by the judgment. Its effect is to deprive the party taken of his liberty, until he makes the satisfaction awarded. 3 *Bl. Com.* 414, 415. 2 *Tidd's Pr.* 993, 1025. *Litt.* sect. 504. *Co. Litt.* 289 a.

The *ca. sa.* in its original form, ran as follows: *Rez vic' salutem. Precipimus tibi quod CAPIAS J. de C. et eum salvo custodias, ita quod habeas corpus ejus coram justitiariis nostris apud Westmonasterium, (tali die,) AD SATISFACIENDUM G. de K. tam de viginti solidis quos idem G. in curia nostra, &c. recuperavit versus eum, quam de viginti solidis qui ei, in eadem curia nostra, adjudicata fuerunt pro damnis suis quæ habuit occasione detentionis debiti prædicti. Et habeas ibi hoc breve. Teste, &c. Reg. Jud.* 31. This has been very closely followed in the modern forms of *ca. sa.* in debt.

CAPIAS IN WITHERNAM. L. Lat. (You take in withernam.) In practice. A writ which lies where cattle or goods distrained have been driven or carried out of the county, so that the sheriff cannot take them on a writ of replevin; commanding him to take other cattle or goods of the distrainer, as a second or reciprocal distress, (*withernam*, or *repetitum namium*, signifying a second taking,) in lieu of the distress formerly taken and withheld. *Reg. Orig.* 82, 83. *F. N. B.* 69 A. 3 *Bl. Com.* 148, 413, 129. 3 *Steph. Com.* 522. See *Withernam*.

CAPIAS PRO FINE. L. Lat. (You take—for the fine.) In English practice. A writ by which a party condemned to pay a fine to the king, was taken and imprisoned until he paid it. *Cro. Eliz.* 170. 5 *Co.* 89. See *Capiatur pro fine*. This writ was disallowed by statute 5 & 6 W. & M. c. 12, in actions of trespass, ejectment, assault and false imprisonment. 3 *Bl. Com.* 398. It seems, however, to be still used in criminal cases. *Cole on Informations*, 97, Appendix A. No. 47. It has been recognised in American practice. 8 *Grattan's R.* 702.

CAPIAS UTLAGATUM. L. Lat. (You take the outlaw.) In English practice. A writ which lies against a person who has been outlawed in an action, by which the sheriff is commanded to take him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. *Reg. Orig.* 138 b. 3 *Bl. Com.* 284,

and Appendix No. iii. sect. 2. 3 *Steph. Com.* 569.

CAPIATUR PRO FINE. L. Lat. (Let him be taken for the fine.) In English practice. A clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it. *Cro. Jac.* 64.

The same form was used in actions of replevin, trespass, ejectment, assault and false imprisonment; the judgment ordering the party to be taken until he paid a fine to the king for the public misdemeanor which was considered as coupled with the private injury in those cases. 3 *Bl. Com.* 398. Since the statute 5 & 6 W. & M. c. 12, this form has been disused. *Id. ibid.* 3 *Steph. Com.* 636, note (s).

CAPITA. Lat. (plur. of *Caput*, q. v.) Heads, and figuratively, entire bodies, whether of persons or animals. *Spelman*.

Persons individually considered, without relation to others, (polls); as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, in *capita*, *per capita*, is derived from the civil law. *Inst.* 3. 1. 6. *Id.* 3. 2. 4. *Nov.* 118, c. 3, ad finem. See *Caput*, *In capita*, *Per capita*.

Heads of cattle. *Inst.* 2. 1. 38. *Id.* 2. 20. 18. *Dig.* 7. 1. 68, 70. *Bract.* fol. 374 b. Hence, according to *Spelman*, *capitalia*, contracted to *capitalia* and *catalia*; whence *catalla*, chattels or goods, generally. *Spelman*, voc. *Capital*. See *Capitalia*.

Heads, chapters or general divisions; titles. *Capita legis*; heads of law. *Hale's Hist. Com. Law*, 87, 88. *Hale's Anal.* sects. xiii. xiv.

CAPITAINE. Fr. and L. Fr. [from L. Lat. *capitaneus*, q. v.] Leader; commander; captain. *Capitaine fote*; commander of the fleet. *Mem. in Scacc.* 24 Edw. I. *Ord. Mar.* liv. 2, tit. 1, art. 1.

Master of a vessel. *Emer. Tr. des Ass.* ch. 7, sect. 5.

CAPITAL. See *Capitale*.

CAPITAL. [Lat. *capitalis*, from *caput*, head or life.] Relating to, or affecting the life of a person. A capital crime or felony is a crime or felony punishable with death, (*quod ultimum inducit supplicium*). *Bract.* fol. 101 b.

Chief; principal; at the head. "Capital burgess." 10 *Mod.* 100. 5 *East*, 372. "Capital citizens." 8 *East*, 487. 1 *Stra.*

385. "Capital message." 3 *P. Wms.* 61.

CAPITAL. [from Lat. *caput*, a head.] A fund employed as the *head*, beginning or basis of an undertaking or enterprise. A fund of money, or property, or both, employed as the basis of a business; a fund upon which a merchant or other person trades or does business. A fund made up by the contributions of two or more persons as the basis of a joint business or copartnership.

CAPITAL STOCK. The fund of a trading company or corporation. See *Capital*.

The amount of money contributed or advanced by the stockholders of a company or corporation, for the purposes of the corporation, as distinguished from its property. 3 *Zabriskie's R.* 195, 196.

CAPITALE, Captale. L. Lat. [plur. *capitalia*, *capitalia*, from *caput*, head.] In old European law. A beast or animal, considered as an article of property; hence, according to Spelman, the term *chatteL*. *Reddant * * decimas, tam in viventi capitali, quam in mortuis fructibus terræ*; they shall pay tithes as well in the living animal, as in the dead fruits of the earth. *Fragm. LL. Aethelstani, apud Spelman. Si ceorl aliquod captaLe furetur, &c.*; if a churl steal any beast. *LL. Inæ, c. 58, ibid.* *Si * * introeat alicujus vicini sui capitale per suum apertum, &c.*; if any neighbor's beast enter through the opening left by himself, &c. *LL. Inæ, c. 40, apud Spelman, voc. Curtillum.*

CAPITALIA, Capitalia. L. Lat. [plur. of *capitale*, *capitale*, q. v.] In old European law. Any kind of goods moveable or immoveable, but properly that kind which consists in animals, from whose heads (*capita*) the things themselves were sometimes called *capita*, sometimes *capitalia*, and by contraction, *capitalia* and *catallia*; whence the law term *catalla*, chattels. *Spelman. Dominica capitalia celata pro furto habentur*; the concealing of the lord's beasts, or chattels shall be considered as theft. *LL. Hen. I. c. 14.*

CAPITALIS. Lat. [from *caput*, head or life.] Capital; affecting or involving life. *Crimen capitale*; a capital crime. *Bract. fol. 120 b, 101 b.* In the civil law, offences punishable by the loss of civil rights, (*amissio civitatis*), interdiction of fire and water, banishment (*deportatio*), or labor in the mines, (*metallum*) were also termed capital. *Dig. 48. 1. 2. Id. 50. 16. 103. Inst. 4. 18. 2.*

CAPITALIS. L. Lat. [from *caput*, head or chief.] In old English law. Chief, principal; at the *head*. A term applied to persons, places, judicial proceedings, and some kinds of property.

Capitalis custos; chief warden or magistrate; mayor. *Fleta, lib. 2, c. 64, § 2.*

Capitalis debitor; a principal debtor, as distinguished from *plegius*, a surety. *Mag. Cart. c. 8. Id. Johan. c. 9.* Called *principalis*. *Fleta, lib. 2, c. 63, § 5.*

Capitalis dominus; chief lord. *Fleta, lib. 1, c. 12, § 4. Id. c. 28, § 5.*

Capitalis plegius; a chief pledge; a head borough. *Fleta, lib. 2, c. 52, § 5. Capitalis baro*, (q. v.); chief baron. *Capitalis justitiarius*, (q. v.); chief justiciary or justice.

Capitalis terra; a head-land. A piece of land lying at the head of other land. See *Forera. Capitale messuagium*; a chief messuage. *Bract. fol. 76 b, 96.*

Capitale placitum; a principal plea. *Bract. fol. 366. See Dig. 50. 16. 103.*

Capitalis redditus; a chief rent, (q. v.)

CAPITALIS BARO. L. Lat. In old English law. Chief baron. *Capitalis baro scaccarii-domini regis*; chief baron of the exchequer. *Towns. Pl. 211.*

CAPITALIS JUSTITIARIUS. L. Lat. In old English law. Chief justiciar or justiciary; chief justice. *Capitalis* (or *summus*) *justitiarius totius Angliæ*; chief justice of all England. The title of the presiding justice in the court of Aula Regia. 3 *Bl. Com. 38. 1 Reeves' Hist. Eng. Law, 48. Nos, vel, si extra regnum fuerimus, capitalis justitiarius noster, mittemus justiciarios per unumquemque comitatum*; we, or if we shall be out of the realm, our chief justiciary will send justices through every county. *Mag. Cart. 9 Hen. III. c. 12.* This title ceased in the fifty-second year of Henry III. 2 *Reeves' Hist. 91.*

Capitalis justitiarius ad placita coram rege tenenda; chief justice for holding pleas before the king. The title of the chief justice of the King's Bench, first assumed in the latter part of the reign of Henry III. 2 *Reeves' Hist. Eng. Law. 91, 285.*

Capitalis justitiarius banci, or de banco; chief justice of the bench. The title of the chief justice of the (now) Court of Common Pleas, first mentioned in the first year of Edward I. 2 *Reeves' Hist. Eng. Law, ub. sup. Crabb's Hist. Eng. Law, 146.* See *Justiciar, Chief Justiciar*. The title

capitalis seems to have originally been confined to the justices of the *Aula Regis*, and the *Bancus*. *Bract.* fol. 108, 108 b.

CAPITANEUS. L. Lat. [from *caput*, a head; Fr. *capitaine*.] In feudal law. One who held an estate or dignity in *capite*, that is, immediately from the king. *Feud. Lib.* 1, tit. 7. *Lib.* 2, tit. 10, 51. A chief lord or baron of the king, (*baro regis vel regni*). *Spelman*. See *Caput*.

A leader; a captain. *Spelman*. *Towns.* Pl. 214, 210.

A naval commander. *Reg. Orig.* 191. *Capitaneus et custos maris*; captain and warden of the sea. The title given to a naval officer, A. D. 1264. *Chart.* 48 Hen. III. *apud Spelman*, voc. *Admiralius*. Thomas de Molton, who was Lord Egremont, a great baron of Lincolnshire, had this title, which Sir Matthew Hale supposed to be superior to that of Admiral, it having been given to lieutenants of England and Ireland, in the absence of the king. P. 24 Edw. I. *Hale's Hist. Com. Law*, (Runnington's ed.) 36, note.

CAPITARE. L. Lat. [from *caput*, head.] In old law and surveys. To head, front or abut; to touch at the head, or end. *Tenent octo acras juxta Goreswall, capitantes ad prædictum wallum*; they hold eight acres near Goreswall, heading to (or on) the said wall. *Cowell*, voc. *Abbuttals*. * * *Unam peciam prati apud Langmede, quæ capitat ad regiam stratam, et laterat ad terras hæredum Nicholai de Sandwyco militis*; one piece of meadow which *heads* on the highway, and *sides* [i. e. borders or touches on the side,] on the lands of the heirs of Nicholas de Sandwich, knight. *MS. Dat. A. D.* 1317, cited in *Cowell*, voc. *Laterare*.

CAPITATIM. Lat. By the head; to each individual. Lord Ellenborough, 4 *M. & S.* 206.

CAPITATION. [from Lat. *caput*, head.] A tax on the head or person; a poll-tax. *Const. U. S.* Art. 1, sect. ix. n. 4.

CAPITE. See *Caput*, *In capite*.

CAPITE MINUTUS. Lat. In the civil law. One who had suffered the *capitis deminutio*. *Dig.* 4. 5. See *Capitis deminutio*.

CAPITULITUM. L. Lat. [from *caput*, head or poll.] In old law. Poll money. *Blount*. *Whishaw*.

CAPITIS DEMINUTIO, (sometimes written **DIMINUTIO**). Lat. In the civil law. The loss of a *status* or civil qualification; the change of a man's former con-

dition, (*prioris status mutatio*). *Inst.* 1. 16. pr. 1 *Mackeld Civ. Law*, 131, § 121. Sometimes called *capitis minutio*. *Dig.* 4. 5. 1. This was of three kinds. See *Caput*, *Status*.

Capitis deminutio maxima; the highest kind of *capitis deminutio*, when liberty was lost, which carried with it citizenship (*civitas*), and family, (*familia*). *Inst.* 1. 16. 1. *Dig.* 4. 5. 11.

Capitis deminutio media; the less or middle kind of *capitis deminutio*, when the right of citizenship was lost, (which carried with it family) but liberty was retained. *Inst.* 1. 16. 2. *Dig.* 4. 5. 11.

Capitis deminutio minima; the least or lowest kind of *capitis deminutio*, when liberty and citizenship were retained, but family or family relations, (otherwise called *status hominis*), underwent a change, as by arrogation of a person *sui juris*, or emancipation of a *filius-familias*. *Inst.* 1. 16. 3. *Dig.* 4. 5. 11. 1 *Mackeld. Civ. Law*, 131, § 121.

CAPITULA. L. Lat. [plur. of *capitulum*, q. v.] In feudal and old ecclesiastical law. Collections of laws or ordinances, (*legum canones*), drawn up under certain divisions or heads, (*constitutorum capita*, i. e. *summas continentia*.) *Spelman*. *Feud. Lib.* 2, tit. 40.

Chapters or assemblies of ecclesiastical persons. See *Capitulum*.

CAPITULA ITINERIS. L. Lat. [Fr. *chapitres de eyre*.] In old English practice. Chapters of the eyre. Chapters, articles, heads or schedules of inquiry, delivered to the justices itinerant, (*in itinere*, *in eyre*), in behalf of the crown, for their direction, and read and given in charge by them to the juries from the various hundreds, at the opening of the eyre. *Bract.* fol. 116, 109. *Britt.* cc. 2, 3. *Fleta*, lib. 1, c. 20. 1 *Reeves' Hist. Eng. Law*, 52, 201. 2 *Id.* 4, 5.

Bracton has given the form of one of these *capitula* at length. It consists of fifty heads, embracing every variety of crime and misdemeanor to which the attention of the jury could be directed. *Bract.* fol. 116—118. In *Fleta*, the number of distinct heads is extended to one hundred and thirty-six. *Fleta*, lib. 1, c. 20. According to Britton, a copy of these chapters had to be delivered to each dozen or twelve, as he calls the jury; (*a cheescun dozeyne soient les chapitres severaument liveres*), and upon these their *presentments* were made, each

head being separately answered to. *Britt. c. 2. Bract. fol. 116.* Hence, doubtless, has originated the modern practice of charging the grand jury at the opening of the higher criminal courts. The records of these inquisitions have been preserved in the Rolls officially denominated "*the Hundred Rolls.*" *Hubback's Evid. of Succession*, 603.

CAPITULA CORONÆ. L. Lat. In old English law. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris*, (q. v.) but of a more minute character, delivered in the year 1194, 5 Ric. I. 1 *Reeves' Hist. Eng. Law*, 201. *Hale's Hist. Com. Law*, c. 7. *Crabb's Hist. Eng. Law*, 130.

CAPITULA DE JUDÆIS. L. Lat. Chapters or articles concerning the Jews. Articles of inquiry relating to the Jews, delivered to the justices itinerant in the reign of Richard I. directing them to adjudge what revenue should be paid by the Jews to the king for protection, license to trade and the like. *Hoveden*, 423. 2 *Bl. Com.* 343. *Hale's Hist. Com. Law*, c. 7. *Crabb's Hist. Eng. Law*, 131.

CAPITULARY. [L. Lat. *capitulare*, from *capitulum*, a chapter.] A collection of chapters, (*capitulum congeries*); a decree or ordinance. *Spelman*. Mr. Barrington applies the term to several of the English statutes. *Barringt. Obs. Stat.* 3, note, *et seq.* Mr. Butler observes that the word is generic, and denotes every kind of literary composition divided into chapters. *Horæ Juridicæ*, 86.

In feudal law, the capitularies (*capitularia*) were a collection of laws, divided into short chapters or heads, promulgated by Charlemagne and other kings of the Franks. The earliest collection of them is that of Angersize, Abbot of Fontenelles, published A. D. 827. Three books were added by Benedict the Levite (that is, the deacon) of the church of Mentz. The best edition is that of Baluze in 1677; the latest is by De Chiniac, Paris, 1780, Basle, 1796. *Butler's Note* 77, Lib. 3. *Co. Litt.* *Butler's Hor. Jur.* 86. 1 *Robertson's Charles V.* Appendix, Note xxxix. *Esprit des Lois*, liv. 28, c. 9.

CAPITULUM. L. Lat. [dimin. of *caput*, a head.] In old English law. A chapter; a small head or division. *Spelman. Termes de la Ley.* *Cowell*, voc. *Chapter*.

An assembly of ecclesiastical persons. A congregation of clergymen under one

dean in a cathedral church, (*clericorum congregatio sub uno decano in ecclesia cathedrali.*) *Co. Litt.* 96. *Bract. fol. 12, 16.* See *Chapter*.

CAPPA. L. Lat. In old records. A cap. See *Capa*.

Cappa honoris; the cap of honor. One of the solemnities or ceremonies of creating an earl or marquis. *Bacon's Works*, v. 474.

CAPTAIN. [Fr. *capitaine*, L. Lat. *capitaneus*, qq. v.] In maritime law. The commander of a ship or vessel, as being its head and conductor or director. More commonly termed in law, *master*, (q. v.)

CAPTIO. Lat. [from *capere*, to take.] In old English law and practice. A taking or seizure of a thing, as an animal. *Bract. fol. 156.* *Est omnis captio justa vel injusta.* *Fleta*, lib. 2, c. 44, § 1. *Bene cognoscit captionem*; (he) well avows the taking. 1 *Salk.* 3.

A taking or seizure of land. *Dies captionis indorsari debet in tergo brevis*; the day of the taking ought to be endorsed on the back of the writ. *Bract. fol. 365 b.*

A taking or arrest of a person. *Reg. Orig.* 278 b. *Bract. fol. 145 b.* *Injusta captio et injusta detentio.* *Fleta*, lib. 1, c. 42, § 1.

A taking or holding of a court. *Captio assisæ*; the taking of the assise. *Bract. fol. 111, 202 b.*

A taking or receiving. *Homagii captio*; taking of homage. *Id.* fol. 16.

CAPTION. [Lat. *captio*, q. v.] In practice. A taking, seizure or arrest of a person. 2 *Salk.* 498. The word in this sense is now obsolete in English law.

A taking or seizure of a thing, as an animal. *Vaugh.* 173. "Caption and asportation." *T. Jon.* 109.

A certificate of the taking of a commission, subscribed by the commissioners. *Blount*.

The title or heading of a legal document, as a bill in equity, an indictment, &c. 1 *Ld. Raym.* 548. *Marshall, C. J.* 8 *Peters' R.* 149. *Wharton's Am. Crim. Law*, 63. The word in this sense seems rather to be derived from *caput*.

CAPTION. [Lat. *captio*, q. v.] In Scotch practice. A taking of a person. Arrest; apprehension. *Bell's Dict.* 7 *Wils. & Shaw's R.* 519, 520.

CAPTOR. L. Lat. In old English law. A taker; a lessee. *Towns. Pl.* 37.

A taker of property; one who seized cattle as a distress. *Fleta*, lib. 2, c. 47, §§ 23, 29.

CAPTOR. L. Lat. and Eng. [from Lat. *capere*, to take.] In international law. One who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. 2 *Bl. Com.* 401. 1 *Kent's Com.* 86, 96, 103.

CAPTURE. [Lat. *captura*, from *capere*, to take.] In international law. A taking or seizure of the goods of an enemy; a taking of prizes in time of war, particularly at sea. 2 *Bl. Com.* 401, 402. 2 *Steph. Com.* 79, 80. 1 *Kent's Com.* 91, 92. See *Seizure*.

CAPUD. Lat. Head; a or the head. An old form of *caput*, (q. v.) *Ad capud bosci*; at the head of the wood. *Rot. Peramb. Forest.* 29 Edw. I. m. 8. *Usque ad summum capud de Akemere.* *Id. ibid.*

CAPUT. Lat. A head; the head of a person; the whole person; the life of a person. See *Æstimatio capitis*.

In the civil law. A person or individual. *In capite libero*; in, or over a free person. *Inst.* 1. 13. 1. *Omnis noxalis actio caput sequitur*; every noxal action follows the person. *Id.* 4. 8. 5.

A certain personal qualification, otherwise called *status*, which formed the indispensable requisite to the capacity for civil rights among the Romans; and of which there were three kinds; freedom, citizenship and family. 1 *Mackeld. Civ. Law*, 129, § 119. *Inst.* 1. 16. pr. et seq. *Dig.* 4. 5. 3, 11, et per tot. See *Capitis deminutio*.

In feudal law. A head or chief; the king, as head of the state. See *Caput, principium et finis*. To hold lands *in capite*, was to hold directly from the king, as the sovereign lord; (*omnium terrarum capite*). *Spelman. Blount, voc. Capite. Caput comitatûs*; the head or chief of the county; one of the ancient titles of the earl. *Gilb. C. Pleas*, 2. *Caput feudi vel terræ*; the chief lord of a fee. *Spelman, Feuds*, c. 4.

In old English law. A head or upper end of a place. *Caput villæ*; the head of the town. *Cowell. Blount. Fleta*, lib. 1, c. 24, § 1. *Caput terræ*; the head or upper end of a piece of land.

A chief or principal place, house or messuage, (*capitale messuagium*.) *Caput comitatûs*; the chief seat of an earl. *Bract.* fol. 76 b. *Caput baroniæ*; the castle, manor house, or chief seat of a baron. *Id. ibid.* *Id.* fol. 93. *Blount. Spelman, voca. Baronia, Baro*.

A head or beginning. *Caput anni*; the beginning of the year; the new year's day. *Cowell*.

A head, or principal division. *Caput legis*; a head of law.

CAPUT LUPINUM. L. Lat. [Sax. *wulfesheofod*.] In Saxon and old English law. A wolf's head. An outlawed felon was anciently so called, because he might be slain or knocked in the head, like a wolf, by any one that should meet him. *Bract.* fol. 128 b, 134. *Fleta*, lib. 1, c. 27, § 13. *Mirr.* c. 4, sect. 4. *Co. Litt.* 128 b, 4 *Bl. Com.* 320. That is to say, he might be killed, if he resisted being taken, or endeavored to escape, but if he did neither, whoever killed him was bound to answer for him, as for any other person. This important explanation, given by Bracton, has been overlooked by some later writers. *Bract. ub. sup.* 2 *Reeves' Hist. Eng. Law*, 20.

CAPUT PORTUS. L. Lat. In old English law. The head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it. *Hale de Jur. Mar.* pars 2, (*de portubus maris*), c. 2. 4 *Tawnat.* 660.

CAPUT, PRINCIPIUM ET FINIS. Lat. The head, beginning and end. A term applied, in English law, to the king, as head of parliament. 4 *Inst.* 3. 1 *Bl. Com.* 188.

CAPUTAGIUM. L. Lat. [from *caput*, head.] In old English law. Head, or poll money, or the payment of it. *Cowell. Blount.* By some considered the same with *chevagiûm*, (q. v.) *Cowell.* See *Spelman, voc. Capitagiûm*.

CAPUTIA. Plural of *caputium*, (q. v.)

CAPUTIUM, Capucium. L. Lat. [from *caput*, head.] In old English law. A head of land; a headland. *Cowell, voc. Buttum*.

CARABUS. L. Lat. In old English law. A kind of raft or boat. *Spelman*.

CARBONES. Lat. In the civil law. Coals. *Dig.* 50. 16. 167.

CARCANNUM. L. Lat. [from Sax. *cacarrne*.] In old English law. A prison or work-house. *LL. Canuti*, c. 62, *apud Spelman*.

CARCARE. L. Lat. In old English law. To load; to load a vessel, (*in navibus carcere*). *Reg. Orig.* 279. *Carcare et discarcare*; to load and discharge, *Townes. Pl.* 59. *Cowell, voc. Cartatus.* See *Car-*

ricare. To load a cart or wagon. *Fleta*, lib. 1, c. 25, § 9. *Id.* lib. 2, c. 85.

Carcata; freighted. *Pryn.* 112. *Towns. Pl. ub. sup.* Loaded. *Fleta*, lib. 1, c. 25, § 9. *Cartata*. *Cowell*.

Carcatio; lading. *Carcationes*; ladings. *Towns. Pl.* 226.

To charge, (in an account). *Fleta*, lib. 2, c. 17.

CARCER. Lat. A prison or gaol. Strictly, a place of confinement or detention and safe keeping, and not of punishment.

Carcer ad continendos homines, non ad puniendos haberi debet; a prison ought to be used for confining men, not for punishing them. *Dig.* 48. 19. 8. 9. Bracton quotes this passage with a slight alteration: *Carcer ad continendos et non puniendos haberi debeat*. *Bract.* fol. 105. See 2 *Mason's R.* 516. Lord Coke quotes it (from Bracton) with a further alteration: *Carcer ad homines custodiendos, non ad puniendos dari debet*; a prison should be assigned for keeping men, not for punishing them. *Co. Litt.* 260 a. See *Prison, Gaol*.

CARCOSIUM. L. Lat. In old English law. A carcass. *Fleta*, lib. 2, c. 79, § 17.

CARECTA, *Carrecta*. L. Lat. [from Fr. *charret*, dimin. of *char*, from Lat. *carrum*, a car, according to Spelman; or according to Blount, from Sax. *cret*.] In old English law. A cart. *Reg. Orig.* 281 b. *Bract.* fol. 217 b, 232. *Fleta*, lib. 1, c. 25, § 9. A vehicle distinguished from both *currus*, and *carrum*. *Bract.* fol. 168. *Vestigia malefactorum sunt sequenda per ductum carectæ, passus equorum, et vestigia hominum, et alio modo*; the traces of the malefactors are to be pursued by the wheel-tracks of carts, the hoof-prints of horses, the foot-steps of men, and other ways. *Id.* fol. 121 b. In *Magna Charta*, it is written *careta*, *caretta*, and *carretta*, (qq. v.)

Carctarius; a carter. *Reg. Orig.* 190. *Fleta*, lib. 2, c. 85.

Carctata; a cart load. 2 *Mon. Angl.* 340. *Cowell*. *Blount*. *Dyer*, 70.

CARENA, *Carina*, *Carrena*. L. Lat. [from Fr. *quarante*, forty.] In old ecclesiastical law. A period of forty days. Of the same meaning as *quarentena*, (Fr. *quarantaine*), quarantine. *Spelman*. See *Quarantine*.

CARETA, *Caretta*, *Carretta*. L. Lat. In old English law. A cart. *Nullus vicecomes—capiat equos vel caretas alicujus pro cariagio faciendo, nisi reddat liberationem*

antiquitus statutum, scilicet pro caretta ad duos equos, decem denarios per diem, et pro caretta ad tres equos, quatuordecim denarios per diem; no sheriff shall take the horses or carts of any man, to make carriage, unless he pay the livery ordained of old, that is to say, for a cart with two horses, ten pence per day, and for a cart with three horses, fourteen pence per day. *Mag. Cart.* 9 Hen. III. c. 21. Spelman, quoting this passage, writes the word *carecta*. *Nullus vicecomes—capiat equos vel caretas alicujus liberi hominis, pro cariagio faciendo, nisi de voluntate ipsius liberi hominis*; no sheriff shall take the horses or carts of any freeman, to make carriage, unless with the consent of the said freeman. *Mag. Cart. Johan.* c. 30. This is nearly the language of the original articles. C. 20. *Fleta*, quoting this passage, writes the word *carecta*. *Fleta*, lib. 2, c. 50, § 27.

CARGO. [Fr. *cargaison*; Span. *cargazon*.] In mercantile law. The load or lading of a vessel; goods and merchandise put on board a ship to be carried, (*merces in navi vehendæ*) to a certain port. This term is considered, both in English and American law, as applying to goods only, and does not include live animals, or persons. 4 *Pick. R.* 429. 2 *Gill & Johns*. 136. 7 *Man. & Gr.* 744, 736, note. See 9 *Metcalf's R.* 354.

CARGA. Span. In Spanish law. An incumbrance; a charge. *White's New Recop.* b. 2, tit. 13, ch. 2, § 2.

CARGAISON. Fr. In French commercial law. Cargo; lading, (*tout ce qui est chargé*). *Emerig. Tr. des Ass.* ch. 10, sect. 1.

CARGARE. L. Lat. In old English law. To charge. *Spelman*.

CARIAGIUM. L. Lat. [from *cariare*, (q. v.); L. Fr. *cariage*.] In old English law. Carriage; the carrying of goods or other things for the king. *Nullus vicecomes—capiat equos, vel caretas alicujus, pro cariagio faciendo*; no sheriff shall take the horses or carts of any person, to make carriage. *Magna Charta*, 9 Hen. III. c. 21. A similar provision was contained in the statute of Westminster 1, c. 1. *Nul preigne chivals, bofes, chares, ne charets, neifes, ne bateux, ne auter choses affaire cariage*; no person shall take horses, oxen, wagons, carts, ships or boats, or other things to make carriage.

CARIARE. L. Lat. [L. Fr. *carier*.] In old English law. To carry. *Reg. Orig.*

46 b. *Cariare et recariare*; to carry and re-carry. *Id.* 127. *Cariavit*; (he) carried. *Id.* 110. *Ad cariaudum*; to carry, for carrying. *Id. ibid.* 127. *Fleta*, lib. 2, c. 76, § 2. *Id.* c. 85.

CARIATOR. L. Lat. [from *cariare*, q. v.] In old English law. A carrier. *Cariatores*; carriers. *Fleta*, lib. 2, c. 73, § 4.

CARIER. L. Fr. To carry. A carrier *ses bleez*. *Yearb.* H. 2 Edw. II. 27.

CARMEN. Lat. In the Roman law. Literally, a verse or song. A formula, or form of words used on various occasions, as of divorce. *Taylor's Civ. Law*, 349.

CARNAL. [L. Lat. *carnalis*, from *caro*, flesh.] Of the body; relating to the body; bodily.

CARNALITER. L. Lat. In old criminal law. Carnally. *Carnaliter cognovit*; carnally knew. Technical words in indictments for rape, and held essential. 1 *Hale's P. C.* 637—639. 3 *Inst.* 60. See 3 *Chitt. Crim. Law*, 812.

CARNISPRIVIUUM. L. Lat. In old English law. Shrovetide. *Towns. Pl.* 43.

CARRERA. Span. In Spanish law. A carriage-way; the right of a carriage-way. *Las Partidas*, part 3, tit. 31, l. 3.

CARRETA, Carrecta. L. Lat. In old English law. A carriage, cart or wain load. *Cowell. Blount.*

CARRICARE. L. Lat. [from Ital. *carrico*, a load, or Lat. *carrum*, a car.] In old European law. To load; to carry any thing on a car or cart. *Spelman.*

CARRIER. One who carries or agrees to carry the goods of another, from one place to another, for hire, or without hire. See *Angell on Carriers, passim*. See *Common carrier*.

CARRUCA. Lat. In the civil law. A four-wheeled vehicle used for riding. *Dig.* 34. 2. 13.

CARRUM, Carrus. Lat. In old English law. A wagon or wain; a four-wheeled vehicle. *Bract.* fol. 168. *Carros vel carectas.* *Fleta*, lib. 3, c. 5, § 13.

CARRYING AWAY. In criminal law. The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it. 2 *Russell on Crimes*, 5. *Wharton's Am. Crim. Law*, § 1802, *et seq.*

"CART." A well known vehicle. A carriage with two wheels, fitted to be drawn by one horse or by a yoke of oxen, and used in husbandry, or commercial cities,

for carrying heavy commodities. *Webster.* Ox-carts are classed under this definition. *Id.*

A carriage in general. *Id.*

Both these senses of the term were recognized in *Favers v. Glass*, 22 *Alabama R.* 621. But the court, in this case, decided that a vehicle with four wheels, drawn by oxen, suited to the ordinary purposes of husbandry, and employed in the same uses to which carts, in the common acceptance of the term, are appropriated, was protected from levy and sale by the statute exempting "one horse or ox-cart" from execution. The court departed from the ordinary sense of the word, in order to give effect to the manifest intention of the legislature. *Chilton, C. J. Id.* 624.

CARTA, Charta. Lat. In old English law. A charter, deed or writing. *Carta non est nisi vestimentum donationis*; the deed is nothing but the clothing of the gift. *Staunford, J. Plowd.* 160. *Carta partita de affectamento*; a charter-party of affreightment. *Towns. Pl.* 224. *Carta perdonationis*; a charter of pardon. *Reg. Orig.* 288, 312. This form of the word occurs in the oldest records; as *Magna Carta*, the *Carta de Foresta*, (qq. v.) See *Charta*.

CARTA. Span. [from Lat. *charta*, q. v.] In Spanish law. A letter or charter. *Las Partidas*, part 3, tit. 18, l. 30.

A deed. *Id.* part 5, tit. 13, l. 14.

A power of attorney. *White's New Recop.* b. 1, tit. 6, ch. 1, § 1.

CARTA DE FORESTA. L. Lat. In old English law. The Charter of the Forest. More commonly called *Charta de Foresta*, (q. v.)

CARTE. Fr. In French marine law. A chart. *Ord. Mar.* liv. 1, tit. 8, art. 2, 3.

CART BOTE. Wood or timber which a tenant is allowed by law, to take from an estate, for the purpose of repairing instruments, [including necessary vehicles,] of husbandry. 2 *Bl. Com.* 35. See *Bote, Plough bote*.

CARTMEN are common carriers. 2 *Kent's Com.* 598, and note. See *Angell on Carriers*, § 74.

CARTEL, Chartel. An instrument or writing for settling the exchange of prisoners of war. See *Chartel*.

CARTEL SHIP. In international law. A ship of truce; a ship or vessel commissioned in time of war, for the purpose of effecting the exchange of prisoners, or carrying proposals of any kind between belligerent powers; and which is privileged from

capture. *Tomlins*. 1 *Kent's Com.* 68. *Brande*.

CARUA. L. Lat. [Fr. *carue*, *chare*.] In old English law. A plough. More commonly written *caruca*, (q. v.) *Spelman*.

Caruagium; caruage or carvage. *Bract*. fol. 37. See *Carucage*.

CARUCA. L. Lat. [See *Carua*.] In old English law. A plough. *Magna Charta*, c. 5. *Bract*. fol. 40. *Fleta*, lib. 2, c. 84. *Spelman*, voc. *Carua*. The same as *soca*. *Litt.* sect. 119. *Caruca boum*; a plough of oxen, that is, drawn by a pair of oxen. *Fleta*, lib. 2, c. 73, § 2. *Equos vel affros carucarum vel carectarum*. *Id.* § 5. *Præcederet caruca boves*; the plough would go before the oxen; it would be putting the plough before the oxen. *Id.* lib. 1, c. 31, § 8.

A car or cart, (*carruca*.) *Towns. Pl.* 198, 239, 59. 1 *Ld. Raym.* 75. But this is rather the classical meaning. *Spelman*, voc. *Carua*. *Sueton. Nero*, 30. It seems to have been confounded with *carucata*, (q. v.) by *Jermyn*, in *Latch*, 216.

Caruagium; carucage, caruage, or carvage. See *Carucage*.

CARUCAGE. [L. Lat. *carucagium*, from *caruca*, a plough.] In old English law. A kind of tax or tribute anciently imposed upon every plough, (*carue* or plough land) for the public service. *Spelman*, voc. *Carua*. Called by *Bracton*, (fol. 37,) *caruagium*; by other writers *caruage*, and *carvage*. *Cowell. Blount*, voc. *Carucata. Termes de la Ley*.

CARUCARIUS. Lat. In the civil law. The driver of a *caruca* or *carruca*, (q. v.) *Dig.* 19. 2. 13.

CARUCARIUS. L. Lat. [from *caruca*, a plough.] In old English law. A ploughman. *Reg. Orig.* 190. *Fleta*, lib. 2, c. 73, § 2.

CARUCATA. L. Lat. [from *caruca*, a plough.] In old English and Scotch law. A carucate, or carve of land; a ploughland. A quantity of land containing as much as might be tilled by one plough in a year and a day. *Reg. Orig.* 1 b. *Co. Litt.* 5 a, 69 a. *Skene de Verb. Signif.* *Blount*, voc. *Carucate*. By some said to be one hundred acres. *Blount*. But probably of no fixed quantity. *Thel. Dig.* lib. 8, c. 12. See *Carve, Ploughland*.

A team or draught of oxen, (*carucata boum*.) for drawing or ploughing. *Cowell. Blount*.

A cart load. *Blount*. Perhaps a corruption of *carecta*, *carreta*, or *careclata*, (qq. v.)

Carucatarius; one who held land in carvage, that is, in socage, or plough tenure. *Cowell. Kennett's Par. Ant.* 354, cited *ibid*.

CARUE. L. Fr. A carve (of land); a ploughland. *Britt.* c. 84.

CARVAGE. The same as carucage, (q. v.) *Cowell. Blount*, voc. *Carucata*.

CARVE. [L. Lat. *carua*, *carucata*; L. Fr. *carue*.] In old English law. A carucate or ploughland. *Stat.* 28 *Edw. I.* See *Carucata, Ploughland*.

CAS. Fr. Case; a, or the case; an event or occurrence. *En ceo cas et en cas semblables*; in this case and the like cases. *Britt.* c. 75. *Si cas aveigne*; if the case happen. *Id. ibid*.

CAS FORTUIT. Fr. In the law of insurance. A fortuitous event; an inevitable accident. *Emerig. Tr. des Ass.* ch. 12. 3 *Kent's Com.* 300. See *Casus fortuitus*.

CASA. Ital. and L. Lat. In old European law. A house. *LL. Longob.* lib. 1, tit. 18, l. 1. *Id.* lib. 2, tit. 17, l. 1. *Spelman*.

CASATA, *Cassata*. L. Lat. [from *casa*, q. v.] In old European law. A house with land sufficient for the support of one family. Otherwise called *hida*, a hide of land, and by *Bede*, *familia*. *Spelman*, voc. *Casa*.

CASATUS, *Cassatus*. L. Lat. [from *casa*, q. v.] In old European law. A vassal or feudal tenant possessing a *casata*, (q. v.); that is, having a house, household, and property of his own, (*suas ædes, suam familiam, suum peculium*.) The *casati*, or *cassati* embraced both bond and free tenants engaged in husbandry, (*vassalli colonici*.) *Spelman*, voc. *Casa*.

The ceorls mentioned in the later Anglo-Saxon charters are sometimes so named. *Cart. Offæ*, A. D. 780. 1 *Spence's Chancery*, 50, and notes (i), (k), *ibid*.

CASAMENTUM. L. Lat. [from *casa*, q. v.] In old European law. The land held by a vassal or tenant; his holding or tenement, (*territorium vassalli, tenementum*.) *Spelman*. The same as *casata*, (q. v.)

CASE. A suit or action; a cause. The Lat. *casus* had formerly the same meaning. *Bract*. fol. 301 b.

A case, in the sense of the constitution of the United States, (Art. III. Sect. II.) is a suit in law or equity, instituted according to the regular course of judicial proceedings, and arises when some subject, touching the constitution, laws or treaties of the United States, is submitted to the

courts by a party who asserts his rights in the form prescribed by law. *Story on Const.* § 1646, (b. 3, ch. 38.) See 1 *Kent's Com.* 325, 326. 9 *Wheaton's R.* 819. 9 *Peters' R.* 224. Bartley, C. J. (dissenting) 6 *Ohio St. R.* 357, 358.

CASE, [Lat. *casus*, Fr. *cas*.], or TRESPASS ON THE CASE. In practice. A form of personal action *ex delicto*, less ancient than the other forms, invented under the authority of the statute of Westminster 2, (13 Edw. I.) c. 24, as a remedy for injuries to which the older forms were not adapted, and intended to supply the defect which, in this respect, was found to exist in the original scheme of personal actions. 3 *Steph. Com.* 461. *Steph. Pl.* 6, 16, (Am. ed. 1824.) It received the name of *case* from the circumstance of the plaintiff's whole *case* or cause of complaint being set forth at length in the original writ, contrary to the usual practice in those formulæ. *Reg. Orig.* 105, 106. 3 *Bl. Com.* 122. It was called *trespass on the case*, because it was devised upon the analogy of the old form of *trespass*. 3 *Steph. Com. ub. sup.* The first example in the books, of the use of this action, or rather the earliest reported case in which it is mentioned, occurs in the reign of Edward III. 22 *Ass.* 41. 3 *Reeves' Hist. Eng. Law*, 89. See *Id.* 243, 391. And see 1 *Spence's Chancery*, 237—243.

This action is very comprehensive in its scope, and may be said to lie in every case where damages are claimed for an injury to person or property, not falling within the compass of the other forms. 3 *Steph. Com.* 462. 3 *Wooddes. Lect.* 88—119. It is the peculiar and appropriate remedy for injuries committed without force, and where the damage sustained is only consequential. 3 *Bl. Com.* 122, 123. See further as to this action, and the particular cases in which it lies, 1 *Chitt. Pl.* 132—145. *U. S. Digest*, Action upon the case, I.

CASE. In practice. A written statement of facts, drawn up in a certain form, and intended to be submitted to a court of law for its opinion or judgment. There are various kinds of cases, as *cases reserved* on the trial of a cause, *cases agreed on* without trial, and *cases made* to move for a *new trial*. See *infra*.

CASE AGREED ON. In practice. A statement of facts in writing, agreed upon between the parties to an action, and submitted to the court without trial, in order to obtain an opinion or decision upon the

points of law arising on such facts. This is sometimes called a *case stated*. 3 *Wharton's R.* 143. 8 *Serg. & R.* 529.

In England, by statute 3 & 4 Will. IV. c. 42, s. 25, the parties are allowed to frame a case of this kind immediately after issue joined, and bring it at once before the court in banc for its decision, in order to avoid the expense and delay of a trial. 3 *Steph. Com.* 621.

CASE RESERVED, OR MADE. In practice. A statement in writing, of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties, under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in banc.* This is otherwise called a *special case*; and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a *case to be made*; instead of obtaining from the jury a special verdict. 3 *Bl. Com.* 378. 3 *Steph. Com.* 621. *Steph. Pl.* 92, 93. 1 *Arch. Pr.* 216. 1 *Burr. Pr.* 242, 463. See *Special verdict*.

Lord Mansfield said, in *Luke v. Lyde*, he always leaned, (even where he had himself no doubt) to make cases for the opinion of the court; but he took particular care that this should not create delay or expense to the parties, and therefore he always dictated the case in court, and saw it signed by counsel before another case was called, and always made it a condition in the rule that it should be set down to be argued within the first four days of the term. 2 *Burr.* 887. In modern practice, however, only a memorandum of the facts is made at the trial; and the case itself is not prepared until some days after.

CASE TO MOVE FOR NEW TRIAL. In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial. *Grak. Pr.* 330. 1 *Burr. Pr.* 469. See *New Trial*.

CASEATRIX. L. Lat. [from *casus*, cheese.] In old English law. A dairy-woman. *Fleta*, lib. 2, c. 87, where her duties are described.

CASSARE. L. Lat. [from Lat. *casus*, void.] In old English law and practice.

To quash, or make void, (*irritum reddere*); to annul. *Ducange*. *Donum suum penitus cassetur*; his gift shall be entirely annulled. *Mag. Chart.* 9 Hen. III. c. 36. *Cassabitur breve*; the writ shall be quashed. *Fleta*, lib. 5, c. 6, § 47. *Cassata*; quashed, as pleas, (*exceptiones*). *Bract.* fol. 394.

To abate. *Towns. Pl.* 26, 59.

CASSATIO. L. Lat. [from *cassare*, q. v.] In old practice. A quashing, or making void; an abatement. *Towns. Pl.* 26, 59.

CASSATION, COURT OF. [Fr. *cour de cassation*.] The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases. It was established in 1790, under the name of the *Tribunal of cassation*, and received its present name in 1804. *Encyclop. Americ.* *Brande*.

CASSETUR BILLA, or QUOD BILLA CASSETUR. L. Lat. (That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, (*billa*.) 3 *Bl. Com.* 303. *Steph. Pl.* 128, 131, (Am. ed. 1824.)

The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting, in fact, to a discontinuance of the action. 2 *Arch. Pr.* 3, 236. 1 *Tidd's Pr.* 683.

CASSETUR BREVE, or QUOD BREVE CASSETUR. L. Lat. (That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ, (*breve*.) 3 *Bl. Com.* 303. *Steph. Pl.* 107, 109, (128, 131, Am. ed. 1824.)

To CAST. [L. Fr. *jecter*, *getter*; Lat. *projicere*.] In old English practice. To allege, offer or present; to put forward. To cast an *essoign* was to allege an excuse for the failure of a party to appear in court, on the return of the original writ. 3 *Steph. Com.* 659. 3 *Bl. Com.* 278. *Roscoe's Real Act.* 156. To cast a *protection* was to present or allege it as an excuse. *Co. Litt.* 128 a, 130, 131. 3 *Reeves' Hist. Eng. Law*, 406.

This word is now used as a popular rather than a technical term, in the sense of—to overcome, overthrow or defeat in a civil action at law. *Webster*.

CAST. [Lat. *jactus*.] Overthrown or defeated in an action. See *supra*.

CASTELGARDUM. L. Lat. In feudal law. The defence or guard of a castle, (*castelli guardia*.) *Spelman*. See *Castile-guard*.

CASTELLAIN. [Fr. *chastellain*, *castelein*; L. Lat. *castellanus*, *castellarius*, qq. v.] In old English law. The keeper or captain of a castle or fortified house, (*præfectus castri*), acting as, or for its owner, (*domini vices ibidem agens*.) *Spelman*, voc. *Castellum*. The constable of a castle. *Id.* *Bract.* fol. 363, 69 b. 2 *Inst.* 31. *Termes de la Ley*. *Blount*.

CASTELLANUS, *Castellanius*, *Castellarius*. L. Lat. [from *castellum*, q. v.] In old English law. A castellan; the keeper, captain or constable of a castle. *Spelman*, voc. *Castellum*. *Bract.* fol. 363. *Cart. de Forest.* c. 14. *Fleta*, lib. 2, c. 50, § 21. See *Castellain*.

An officer of the forest. *Manwood*, part 1, p. 113. *Blount*.

CASTELLANIA, *Castellatura*. L. Lat. [from *castellanus*, q. v.] In old English law. The office of a castellan; the territory or jurisdiction of a castle. *Spelman*, voc. *Castellum*.

CASTELLARIUM, CASTELLATUS. L. Lat. [from *castellum*, q. v.] In old English law. The precinct or jurisdiction of a castle. *Blount*.

CASTELLORUM OPERATIO. L. Lat. In Saxon and old English law. Castle work. Service and labor done by inferior tenants, for the building and upholding castles, and public places of defence. One of the three necessary charges, (*trinoda necessitas*) to which all lands among the Saxons were expressly subject. *Cowell*. *Kennett's Par. Ant.* 114. See *Trinoda necessitas*.

CASTELLUM. L. Lat. In old law. A castle; a fortified building, place or town. *Dicitur tam pro villa, quam pro oppido et structura munita*. *Spelman*.

CASTER, CESTER, CHESTER. Terminations of the names of various places in England; derived from the Lat. *castrum*, a fort or camp, which was appended by the Romans to the names of those places where they fortified themselves. *Tomlins*. *Whishaw*.

CASTIGATORIUM. L. Lat. In old English law. A castigatory. *Pillorium*, *timborale vel castigatorium*. *Fleta*, lib. 2, c. 12, § 29. See *Castigatory*.

CASTIGATORY. [L. Lat. *castigatori*-

um, from Lat. *castigare*, to correct.] In old English law. An engine of correction for the punishment of scolds or unquiet women; otherwise called the *cucking stool*, *trebucket*, and *tumbrel*. 4 *Bl. Com.* 168, 169. *Fleta*, lib. 2, c. 12, § 29. See *Castigatorium*, *Cucking stool*.

CASTLEGUARD, *Castelgard*, *Castleward*. [L. Lat. *castelgardum*, *castelli guardia*, *wardum castri*, *custodia castri*.] In feudal and old English law. The defence or guard of a castle, otherwise called *watch and ward*. A species of feudal service or tenure; a kind of tenure by knight's service. *Spelman*, voc. *Castelgardum*. *Termes de la Ley*. *Litt.* sect. 111. *Co. Litt.* 82 b. The service was sometimes changed into an annual rent, and then the tenure became a tenure in socage. 4 *Co.* 88; *Luttrell's case*. See 3 *How. St. Trials*, 866.

An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle. *Magna Charta*, c. 20. *Stat. 32 Hen. VIII.* c. 48. *Cowell*.

The circuit itself, inhabited by such as were subject to this service. *Cowell*. *Blount*. *Termes de la Ley*.

CASTLEGUARD RENTS. In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it. *Stat. 22 & 23 Car. II.* c. 24. See *Castleward*.

CASTRENSIS. Lat. [from *castrum*, a camp.] In the Roman law. Relating to the camp or military service.

Castrense peculium; a portion of property which a son acquired in war, or from his connection with the camp. *Dig.* 49. 17. See *Peculium castrense*.

CASTRUM. Lat. In the Roman law. A camp.

In old English law. A castle. *Bract.* fol. 69 b. *Fleta*, lib. 2, c. 47, § 1.

A castle, including a manor. 4 *Co.* 88; *Luttrell's case*. 2 *Inst.* 31.

CASU CONSIMILI. See *Consimili casu*.

CASU PROVISIO. L. Lat. (In the case provided.) In old English practice. A writ of entry given by the statute of Gloucester, 6 Edw. I. c. 7, where a tenant in dower aliened in fee, or for life. It lay for him in the reversion against the alienee, during the life of the tenant in dower. *F. N. B.* 205 N. *Termes de la Ley*. *Ros-*

coe's Real Act. 94. It received its name from a clause which it contained, referring to the statute in that case provided. *Id.* 95.

CASUALEJECTOR. In practice. The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come *casually*, or by accident upon the premises, and to turn out or eject the lawful possessor, 3 *Bl. Com.* 203. 3 *Steph. Com.* 670, *et seq.* *Adams on Eject.* 15, 16. This, with other fictions of the action of ejectment, has been abolished by the laws of several of the United States. 2 *N. Y. Rev. St.* [304,] 291, § 6. *Mich. Rev. St.* 471, sec. 6, (ed. 1838.)

CASUALIS. Lat. [from *casus*, accident.] In old English law. Casual; accidental. *Homicidium casuale*. *Fleta*, lib. 1, c. 31, § 4.

CASUALTIES OF SUPERIORITY. In Scotch law. Certain emoluments arising to a superior, which, depending on the occurrence of certain circumstances, are termed *casualties*, in contradistinction to the feu-duty, or fixed emolument arising from the contract of feu. *Bell's Dict.*

CASUALTY. [from Lat. *casus*, q. v.] Inevitable accident; an event not to be foreseen or guarded against. A loss from such an event or cause; as by fire, shipwreck, lightning, &c. *Story on Bailm.* § 240.

CASUS. Lat. [from *cadere*, to fall, to happen; Fr. *cas*.] A case. *Casus iste evenit apud Clarendone*; that case happened at Clarendon. *Bract.* fol. 45. *Est tamen casus, quo*, &c.; there is, however, a case in which, &c. *Inst.* 2. 14. pr. *Facta et casus qui quotidie emergunt*; the facts and cases which daily arise. *Bract.* fol. 1 b. *In omni casu*. *Id.* fol. 23. *In hoc casu*. *Id. ibid.* *Id.* fol. 276. *Inst.* 2. 14. 6. *In primo casu*. *Fleta*, lib. 2, c. 65, § 18.

A case at law; a cause or action. *Cadit mulier à casu*; the woman loses her case. *Bract.* fol. 301 b.

An event; a circumstance or combination of circumstances. See *Casus federis*.

A chance; an accident or misfortune, *Inst.* 4. 3. 3. See *Casus fortuitus*.

CASUS FŒDERIS. Lat. The case of the treaty or compact; the case or event contemplated by a treaty; a case within it, or to which it applies. 1 *Kent's Com.* 49. Wells, arg. 3 *Cowen's R.* 104. Applied to an exigency contemplated by the constitution of the United States, (the *fœdus* of

the union.) *Id.* 264. Applied also to an ordinary contract, as to a respondentia bond. Story, J. 4 *Mason's R.* 253.

CASUS FORTUITUS. L. Lat. [Fr. *cas fortuit.*] A fortuitous or accidental event; an inevitable accident. An event occurring without the intervention of human agency, and producing a loss, in spite of all human effort or sagacity. 3 *Kent's Com.* 216, 300. *Quod fato [damno fatali] contingit, et cuius diligentissimo possit contingere;* that which happens from a cause above human control, and which may happen to any one, even the most careful. *Id. ibid.* *Accidens quod per custodiam, curam, et diligentiam mentis humanas evitari non potest;* an accident which cannot be avoided by the utmost caution and effort of the human mind. *Straccha, Glossa.* 22, cited 3 *Kent's Com.* 300, note. *Ad vim majorem vel ad casus fortuitos non tenetur quis, nisi sua culpa intervenerit;* in cases of superior force or inevitable accident, a person is not bound, unless his own misconduct be concerned. *Fleta*, lib. 2, c. 72, § 16.

Casus fortuitus non est sperandus; et nemo tenetur divinare. A fortuitous event is not to be expected, and no man is bound to foretell [or foresee it]. 4 *Co.* 66.

Casus fortuitus non est supponendus. A fortuitous event is not to be presumed. *Hardr.* 82, arg.

CASUS MAJOR. Lat. In the civil law. A casualty; an extraordinary casualty, as fire, shipwreck, &c. *Dig.* 44. 7. 1. 4. *Story on Bailm.* § 240.

CASUS OMISSUS. Lat. A case omitted, overlooked or not provided for. Applied usually to omissions in a statute to provide for a particular case. 2 *Bl. Com.* 260. 4 *Id.* 302. See 1 *W. Bl.* 426. *Com.* 50. 1 *P. Wms.* 392. 11 *East*, 1.

Casus omissus et oblivioni datus dispositioni juris communis relinquitur. A case omitted and given to oblivion [forgotten] is left to the disposal of the common law. 5 *Co.* 38. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute. *Broom's Max.* [37.]

CATALLA. L. Lat. In old English law. Chattels, or *catals*, as anciently written. A term including all property moveable and immoveable, except fees and freeholds; (*omnia bona mobilia et immobilia, quæ nec feoda sunt, nec libera tenementa.*) *Spelman.* *Termes de la Ley*, voc. *Catals.* *Reg. Orig.* 139 b. 1 *Steph. Com.* 262.

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Quamdiu catalla debitoris præsentia sufficient ad debitum reddendum; as long as there are present sufficient chattels of the debtor to pay the debt. *Mag. Cart.* 9 Hen. III. c. 8. *Quamdiu catalla debitoris sufficient ad debitum reddendum.* *Mag. Cart. Johan.* c. 9. *Dum catalla debitoris sufficient.* *Artic. Mag. Cart. Johan.* c. 5. *Omnia catalla cedant defuncto;* all the chattels shall belong to the deceased. *Mag. Cart.* 9 Hen. III. c. 18. *Id. Johan.* c. 26. See *Chattels.*

This word is considered by Spelman as derived, by contraction, from *capitalia*, (which see). The singular *catallum* (q. v.) rarely occurs, although Bracton uses it in several places. *Catalla*, according to the same writer, had nearly or quite the sense of *averia*, (beasts or cattle), being demandable under that name. *Bract.* fol. 159 b. See *Averia*. It seems to have been, from a very early period, united with the word *bona*, in the phrase *bona et catalla*, of which the familiar modern phrase *goods and chattels* is a translation. *Bract.* fol. 60 b. *Reg. Orig.* 140, 141.

CATALLA OTIOSA. L. Lat. In old English law. Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plough; called also *animalia otiosa*, and *averia otiosa.* *Bract.* fol. 217, 217 b. *Fleta*, lib. 4, c. 17, § 15. 3 *Bl. Com.* 9.

CATALIS CAPTIS NOMINE DISTRICTIONIS. See *De catallis*, &c.

CATALIS REDDENDIS. See *De catallis reddendis*.

CATALLUM. L. Lat. In old English law. A chattel. *Nisi catallum quod continetur in carta;* except the chattel which is contained in the charter. *Art. Mag. Cart. Johan.* c. 34. *Nisi sortem, hoc est, catallum in charta contentum;* except the principal, that is, the chattel contained in the charter. *Stat. Merton.* *Fleta*, lib. 2, c. 57, § 8. *Bract.* fol. 60 b. See *Id.* fol. 131, 272. *Laicum catallum;* a lay chattel. *Id.* fol. 412. A word of rare occurrence. See *Catalla*.

This word occurs in the laws of the Alamanni. *L. Alaman.* tit. 82. *Spelman*, voc. *Transpasso*. But it is not noticed by Spelman in his derivation of the plural *catalla* from *capitalia*. The singular of the latter was *capitale*, the change of which into *catallum* does not appear so obvious. See *Capitale*.

CATANEUS. L. Lat. In feudal law. A tenant *in capite*, or in chief. *Spelman*. A captain. *Id.*

Considered by *Spelman* as an abbreviation or contraction of *capitaneus*, just as *catala*, or *catalia* was of *capitalia*. See *Capitaneus*.

CATCHPOLE. [L. Lat. *cachepolus*, *cacepolus*.] An officer who makes arrests.

Though now employed as a term of contempt for a sheriff's officer, this word seems to have been formerly used without reproach, as an ordinary official epithet. *Stat. 25 Edw. III. st. 4, c. 2. Cowell. Blount.*

CATENARE. L. Lat. [from *catena*, a chain.] In old English law. To chain. *Catenavit et in ferris tenuit*; chained and kept in irons. *Mem. in Scacc. H. 23 Edw. I.*

CATER COUSIN. A corruption of *quater cousin*, according to *Blackstone. Law Tracts, 6.*

CATEUX. Norm. Chattels. See *Chateux*.

CATHOLIC CREDITOR. In Scotch law. An universal creditor; one whose debt is secured over several subjects, or over the whole subjects belonging to the debtor. *Bell's Dict.*

CATHOLIC EMANCIPATION ACT. The statute of 10 Geo. IV. c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in the state. *3 Steph. Com. 109.*

CATTEL. An old form of cattle. *Finch's Law, b. 2, c. 17.*

CATTLE-GATE. In English law. A right to pasture cattle in the land of another. It is a distinct and several interest in the land, passing by lease and release. *13 East, 155. 5 Taunt. 811. See 34 English Com. Law & Eq. R. 511.*

CAUDA TERRÆ. L. Lat. In old English law. A land's end; or the bottom or extreme part of a ridge or furrow in arable land. *Cowell.* The bottom or lower end of a field; perhaps, a slip of unploughed land at the lower end of a field, as *caput terræ*, a headland, was at the upper end.* See *Abutments, Butts, Headlands*.

CAULCEIS. L. Fr. A word used in old statutes, (6 Hen. VI. c. 5.) to signify causeways, or causeys. From the Latin *calcetum*, (q. v.) *Cowell. Blount.*

CAUPO. Lat. In the civil law. An innkeeper. *Dig. 4. 9. 4, 5. See Caupones.*

CAUPONA. Lat. [from *caupo*, q. v.] In the civil law. An inn or tavern. *Inst. 4. 5. 3. Dig. 4. 9. 1. 5. Id. 4. 9. 5. Id. 47. 5.*

CAUPONES. Lat. (pl. of *caupo*.) In the civil law. Innkeepers. *Dig. 4. 9. 1. 5. Id. 47. 5. Story on Agency, § 458.*

CAURSINES. [L. Lat. *caorcini*, *caursini*, *corsini*.] Italian merchants who came into England in the reign of Henry III., where they established themselves as money lenders, but were soon expelled for their usury and extortion. *Cowell. Blount. Spelman, voc. Causini. Matth. Paris, cited ibid.* They seem to have been Lombards, deriving their name from a town in Lombardy.

CAUSA. Lat. A cause; an occasion; a reason. *Causa proxima*; the next or immediate cause; sometimes called *causa causata*, a cause produced by a previous cause. *Causa remota*; the remote or original cause; sometimes called *causa causans*, a cause producing another cause. Lord Ellenborough, 4 *Campb.* 284. Sometimes called *causa causæ*, the cause of a cause. *Causa causæ est causa causati*; the cause of a cause is the cause of the thing caused. 12 *Mod.* 639. But see *infra*.

In actions on the case, a distinction was formerly made between *causa causans*, the remote cause, and *causa causata*, the consequential damage, or immediate cause of the action. 3 *Reeves' Hist. Eng. Law, 244.* "Where a man is interrupted in exercising an office, that is *causa causans*, by which he loses his fees, &c., and that is *causa causata*, the immediate cause or point of the action." 9 *Co.* 50, 51; *The Earl of Shrewsbury's case*. The term *causa causans* is still in use. "The entrusting such a powerful and dangerous engine as a locomotive, to one who will not submit to control and render implicit obedience to orders, is itself an act of negligence, the *causa causans* of the mischief; while the proximate cause, or the *ipsa negligentia* which produces it, may truly be said, in most cases, to be the disobedience of orders by the servant so entrusted." *Grier, J. 14 Howard's R. 487.*

Causa proxima, non remota, spectatur. The immediate, not the remote cause, is looked at, or considered. Lord Ellenborough, 12 *East*, 648. 3 *Kent's Com.* 302. *Story on Bailm.* § 515, and notes. Or, in the language of Lord Bacon, *In jure non remota causa, sed proxima spectatur.* In

law, not the remote but the immediate cause is considered. *Bac. Max. Reg. 1.* "Though, in philosophy, they say *causa causa est causa causati* [see *supra*,] yet in law, the immediate cause is respected." *Freem. 329.* "It were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree." *Bac. Max. ub. sup.* Lord Bacon has illustrated this maxim by examples of covenants, leases, feoffments and other conveyances. In modern practice, however, it is chiefly applied to the law of marine insurance, in which it is an established rule that the loss must be a direct or immediate, and not a remote consequence of the peril insured against. *Park on Ins.* (8th ed.) 131. *Broom's Max. 104*, [166.] 1 *Kernan's R. 9*, 15. Thus, if a ship be driven ashore by the wind, and in that situation be captured by an enemy, the loss is to be imputed to the capture, and not to the stranding. 3 *Ken's Com. 302*, and note. In this instance, the stranding is the *causa remota*, or *causans*; the capture the *causa proxima*, or *causata*. But see 2 *Bing. 205*. 1 *Story's R. 157*. *Curtis, J. 14 Howard's R. 366*.

The same maxim is applied in the law of agency; an agent not being responsible for a loss occasioned by an act or omission on his part, where the loss is merely a remote consequence of such act or omission.* *Story on Agency*, § 217 c.

Causa et origo est materia negotii. The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 *Co. 99*, *Shelley's case*. Things are construed according to their cause and beginning. *Finch's Law*, b. 1, ch. 3, p. 10. *Wingate's Max. 41*, max. 21. *Id. 61*, max. 25. This is substantially the same with the maxim of the civil law:—*Cujusque rei potissima pars principium est.* The chiefest part of every thing is the beginning. *Dig. 1. 2. 1.*

CAUSA. Lat. In old English law. A title; a source, mode or ground of acquisition. 1 *Mackeld. Civ. Law*, 273, § 263. *Titulus est justa causa possidendi id quod nostrum est*; title is the lawful ground of possessing that which is ours. 8 *Co. 158*, [305]. *Inter alias causas acquisitionis, magna, celebris, et famosa est causa dona-*

tionis; among other sources of acquisition, a great, distinguished and well known source or title is that of gift. *Bract. fol. 11.* *Est etiam alia causa acquirendi rerum dominia, quæ dicitur causa successionis*; there is also another source or mode of acquiring the ownership of things, which is called the source of succession, [title by succession]. *Id. fol. 62 b.* See *Id. fol. 31 b*, 40.

CAUSA. L. Lat. In old English law. A condition. *Item alia [donatio] fit ob causam, &c.* *Et hoc genus donationis improprie dicitur donatio, cum fiat sub conditione, &c.*; another kind of gift is made for cause, &c. And this kind of gift is improperly called a gift, since it is made under a condition, &c. *Bract. fol. 11.*

A cause, reason, or consideration; the consideration of a contract. *Dig. 2. 14. 7. 1 & 2.* *Fit etiam donatio quandoque ex causa præcedente, et quandoque ex causa subsequente; præcedente, ut si dicam, do tibi hanc rem quia mihi bene servisti, &c.* A gift is also sometimes made for a preceding consideration, and sometimes for a subsequent consideration; a preceding one, as if I should say, I give you this thing because you have served me well. *Bract. fol. 19 b.* *Fit donatio alicui ob causam præteritam, quia diu servivit, vel præsentem, quia bene servit, vel futuram, quia bene serviet, &c.* A gift is made to one for a past consideration, because he hath served long, or a present consideration, because he doth serve well, or a future, because he will serve well. *Id. fol. 33 b.* In Scotch law, the consideration of a deed is still called the *cause*. *Bell's Dict.*

Quia, in the civil law, was the proper word to denote a cause or consideration, as *ut* denoted a qualification, and *si*, a condition. *Id. fol. 18 b.* Hence the verse,

Scito quod ut modus est, si, conditio, quia, causa.
Id. ibid.

CAUSA. Lat. In old English law. A cause; a suit or action pending. *Causa testamentaria*; a testamentary cause. *Causa matrimonialis*; a matrimonial cause. *Bract. fol. 61.* *Causa jactitationis matrimonii*; a suit of jactitation of marriage. All these causes have in England, until recently, been exclusively cognizable in the spiritual courts. *Id. ibid.* 3 *Steph. Com. 712—715.*

CAUSA. L. Lat. In old European law. Any moveable thing or article of property, (*pro re quavis et bonorum parte.*)

Capitul. lib. 5, tit. 208. L. Salic. tit. 46. Spelman.

CAUSA REL. Lat. In the civil law. The accessions, appurtenances or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. *Inst. 4. 17. 3. Dig. 6. 1. 20. 1 Mackeld. Civ. Law, 155, § 153. Id. 310, § 289.*

CAUSA. Lat. By reason of; on account of. *Causa adulterii, sevitiæ, consanguinitatis, præcontractus, frigiditatis*; by reason of adultery, cruelty, consanguinity, pre-contract, frigidity. *Hale's Anal. sect. xiv.*

With reference to; in contemplation of. *Causa mortis*; in anticipation of death. See *Donatio causa mortis*.

CAUSA DATA ET NON SECUTA. In the civil law. Consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event, was reclaimed if that event did not take place. *Dig. 12. 4. Cod. 4. 6. See Cas. temp. Talbot, 122.*

CAUSA HOSPITANDI. Lat. For the purpose of being entertained as a guest. *4 M. & S. 310.*

CAUSA MATRIMONII PRÆLOCUTI. L. Lat. (By reason of a marriage before treated of.) In old English practice. A writ of entry that formerly lay where a woman had given lands to a man in fee simple, with the intent that he should marry her, and he refused to do so within a reasonable time, after having been required by the woman. *Reg. Orig. 233. F. N. B. 205. 3 Reeves' Hist. Eng. Law, 38. 3 Bl. Com. 183, note. Roscoe's Real Act. 98.*

CAUSA PATET. Lat. The reason is open, obvious, plain, clear, or manifest. A common expression in Perkins and other old writers. *Perk. ch. 1, ss. 11, 14, 97. Causa patet ex præmissis*; the reason is plain from the premises. *Id. c. 8, s. 226.*

CAUSA SCIENTIÆ PATET. L. Lat. The reason of the knowledge is evident. A technical phrase in Scotch practice, used in depositions of witnesses.

CAUSAM NOBIS SIGNIFICES. L. Lat. (You signify to us the reason.) In old English practice. A writ which formerly lay where a mayor of a town or city, after having been commanded by the king's writ to give seisin to the king's grantee,

had delayed to do so; commanding him to *show cause* why he so delayed the performance of his duty. *Cowell. Blount.*

CAUSARE. L. Lat. [from *causa*, q. v.] In old English practice. To cause or produce. *Causans*, causing. *Causata*, caused.

To complain of; to show cause against, or object to. *Causari poterunt et calumpnari multis modis*; they may be objected to, and challenged in many ways. *Bract. fol. 75 b. Id. fol. 238, 334.*

In old European law. To manage a cause; to litigate, (*causam agere, litigare*). *Spelman, voc. Causa. Si quis causam alterius agere aut causare præsumperit*; if any one shall presume to prosecute or manage the cause of another. *LL. Longob. lib. 2, tit. 52, l. 1, cited ibid.* So *actionare*, (q. v.) to prosecute an action.

CAUSATOR. L. Lat. [from *causare*, q. v.] In old European law. One who manages or litigates another's cause. *Spelman, voc. Causa.*

CAUSE. [Lat. *causa*, q. v.] The origin or foundation of a thing, as of a suit or action; a ground of action. *1 Comstock's R. 47.*

That which produces an effect; that which moves, leads, or induces. The consideration of a contract, that is, the inducement to it, or the reason which moves the contracting party to enter into it, is, in the civil and Scotch law, called the *cause*. See *Consideration*.

An action or suit at law or in equity; a case in court. The terms "cause" and "action" are not strictly synonymous. A *cause* is not, like an action or suit, said to be *commenced*; nor an *action*, like a *cause*, said to be *tried*. There are other peculiar applications of the term, as in the expressions "title of a cause," "counsel in a cause," &c.

CAUSIDICUS. Lat. [from *causa*, and *dicere*, to speak.] In the civil law. A pleader; one who argued a cause *ore tenus*. *Cod. 2. 6. 6. Nullus clericus nisi causidicus*; no clerk who was not a pleader. *Will. Malms. De Gest Reg. l. 4. 1 Bl. Com. 17. 1 Spence's Chancery, 14, note (d).* In the civil law, there was a distinction between *causidicus* and *advocatus*. *Cod. ub. sup.*

CAUTELE. L. Fr. Precaution. *Et bone cautele serra*; and it will be a good precaution. *Britt. c. 39.*

CAUTIO. Lat. [from *cavere*, to take care, provide for, secure.] In the civil law.

Security for the performance of an obligation, or other act; security in an action; bail, or, as literally rendered in the Scotch law, *caution*; otherwise termed *satisfactio*. *Inst.* 4. 11. *Dig.* 2. 8. *Fleta*, lib. 6, c. 45. See *Caution*. *Idonea cautio*; sufficient security. *Reg. Orig.* 67.

Cautio juratoria; security given by the oath of the party. *Inst.* 4. 11. 2. 1 *Mackeld. Civ. Law*, 176, § 184. *T. Raym.* 226, arg.

Cautio fidejussoria; security given by sureties, pledges, or bondsmen. *Id. ibid.* *Bract.* fol. 337 b. *Clerke's Prax. Cur. Adm.* tit. 4.

Cautio pignoratitia; security given by pledge, or deposit, as plate, money, or other goods. *T. Raym. ub. sup. Reg. Orig.* 66, 67, *et in marg.* See *De cautione admittenda*.

CAUTIO PRO EXPENSIS. Lat. Security for costs. See *Nov.* 112, c. 2.

CAUTION. In admiralty and Scotch law. Security; bail. *P. Cyclopædia*, voc. *Bail.* 6 *Mod.* 162. See *Caution*.

CAUTIONARY. In Scotch law. The obligation by which a party becomes surety for another, answering to the English *guarantee*. It is defined by *Stair*, "the promise or contract of a man, not for himself, but another." *Brande.* See *Ersk. Inst.* b. 3, tit. 7, § 22. See *Cautionary*.

CAUTIONER. In Scotch law. A surety for a debt. 1 *Kames' Equity*, pref. *Id.* 410, 417. *Ersk. Inst.* b. 3, tit. 7, § 23. *Bell's Dict.* A guarantor. *Brande.*

CAUTIONRY. In Scotch law. Suretyship. 1 *Forbes' Inst.* part 2, b. 3, ch. 2, tit. 3. The obligation of suretyship. *Bell's Dict.*

CAVEAT. Lat. [from *cavere*, to take care, or beware.] Let him beware. A formal notice, or caution, given by a party interested, to a court, judge, or public officer, against the performance of certain judicial or ministerial acts. *P. Cyclopædia*. A process used in the spiritual courts in England, and in courts of similar jurisdiction in the United States, to prevent the proving of a will, or the granting of administration; and in the English and United States courts, to prevent the granting of letters patent. 3 *Bl. Com.* 98, 246. *Loveless on Wills*, 35. 2 *Steph. Com.* 89. *Dane's Abr.* c. 223.

In American law. A kind of equitable process, resembling an injunction, issued to prevent the granting of a patent for lands.

3 *Call's R.* 495. 1 *Wash. (Va.) R.* [38.] 50. 12 *Grattan's R.* 670. 2 *Hilliard's Real Prop.* 251, note (1). The expressions "to caveat," "caveator," and "caveatee," are used in some of the states. 4 *Call*, 196. 3 *Id.* 28. 1 *Harr. & McH. R.* 189. 9 *Grattan's R.* 508. 12 *Id.* 670.

The object and effect of a caveat are to stay the proceedings, in order to allow the party interested an opportunity of contesting the validity of the will, or the right to the administration, or letters patent. 2 *Chitt. Gen. Pract.* 502, 503. 3 *Bl. Com.* 98.

Caveat emptor. Let the buyer take care; the buyer must take care, or be on his guard. *Hob.* 99. *Co. Litt.* 102 a. 2 *Inst.* 714. *Broom's Max.* [605.] The purchaser must examine for himself the article offered to him for sale, and exercise his own judgment respecting it. If he purchase without examination, or after a hasty examination, or in mere reliance upon the seller, and the article turns out to be defective, it is his own fault, and he has no remedy against the seller, unless the latter expressly warranted the article, or made a fraudulent representation concerning it, or knowing it to be defective, used some art to disguise it. This is a leading maxim of the law relating to the contract of sale; and its application is not affected by the circumstance that the price is such as is usually given for a sound commodity. 2 *Steph. Com.* 126, and cases cited *ibid.* *Cro. Jac.* 2. 1 *Selden's R.* 88. 1 *Smith's Leading Cases*, 78. *Broom's Maxims*, [605—638.] 2 *Wooddes. Lect.* 251. 2 *Kent's Com.* 478—488, and notes. 1 *Story's Eq. Jur.* § 212. It seems to have been originally applicable not to the quality, but the title of the goods sold. *Hob.* 99. *Stat.* 13 *Edw. I.* c. 40. 2 *Wooddes. Lect.* 251, note. In modern law, however, the rule is, that if the seller has possession of the article, and sells it as his own, and not as agent for another, and for a fair price, he is understood to warrant the title. 2 *Kent's Com.* 478.

This maxim is applicable to sales of lands as well as goods, though not referred to with the same frequency. See *Broom's Max.* [605—613.] But see 2 *Jones' Eq. R.* 233. It applies to judicial as well as other sales; such as sales by sheriffs, administrators, and other officers. 2 *Ohio R. (N.S.)* 36. 15 *Illinois R.* 295. 25 *Alabama R.* 626, 681, 690.

* * Lord Hobart, in the case of Moore

v. Hussey, refers to the statute of Westminster 2, c. 14, [40], as giving this maxim at length in the following words: *Caveat emptor, qui ignorare non debuit quod jus alienum emit*, (let the purchaser beware, who should not be ignorant that he is buying the right of another.) *Hob. 99*. The important word *caveat*, however, is not used in the passage of the statute referred to, which is in the following words: *Expectet emptor (qui ignorare non debuit quod jus alienum emit) usque ad aetatem warranti sui, &c.*; the purchaser shall wait, (who ought not to have been ignorant that he bought the right of another,) until the age of his warrantor, &c. See it quoted, *Yearb. M. 6 Edw. III. 36*. The case of a sale of goods does not appear to be contemplated by the statute. 2 *Inst. 455*.

CAVENA. L. Lat. In feudal law. A vault or repository for keeping grain, wine, oil, &c. *Feudum de cavena* or *feudum cavenæ*, was an annual stipend of wine, grain, or other provisions, paid to a military vassal, or feudatory. *Feud. Lib. 2, tit. 1, § 1. Id. tit. 2, § 1*. Called a barbarous word. *Hotom. de Verb. Feud.*

CAVERE. Lat. In the civil and common law. To take care; to exercise caution. See *Caveat emptor*.

To take care or provide for; to provide by law. *Cavetur*; provision is made, a remedy is given. *Inst. 4. 3. 13. Cautum est*; it is provided or enacted. *Id. 3. 8. 2. Id. 4. 3. pr.*

To provide against; to forbid by law. *Inst. 1. 25. 13*.

To give security. *Nisi caveant tutores et curatores, &c. Inst. 1. 24. 3. Cautum*; secured. *Dig. 50. 16. 188. § 1*.

To give caution or security on arrest. *Clerke's Prax. Cur. Adm. tit. 4*.

CAYA. L. Lat. [Sax. *cæg*.] In old English law. A quay, kay, key, or wharf. *Cowell*.

CAYAGIUM. L. Lat. [from *caya*, q. v.] In old English law. Cayage or kayage; a toll or duty anciently paid for landing goods at a quay or wharf. *Cowell*. See *Kayage*.

C. B. An abbreviation of *Communis Bancus*, (Common Bench). Initial letters employed in the books to designate the court of *Common Bench*, or *Common Pleas*, in England. See *Bancus*, *Communis Bancus*. The letters C. P. are now generally used.

CE, *Ceo*, *Cecy*. L. Fr. This; that. *Kelham. Ceals*; those. *Id.*

CEAPGILD, *Ceapgel*. Sax. [from *ceap*, a beast, or other chattel, (Lat. *merx*, *pecus*, *catallum*,) and *gild*, or *geld*, a payment or forfeiture.] The payment or forfeiture of a beast; a species of forfeiture anciently imposed in England. *Spelman. Id. voc. Hundredus*. In several of the Lexicons, this word is erroneously written *ceapgildum*.

CEAUS, *Ceaux*. L. Fr. Those. *Assis. de Jerus. c. ix. Kelham*.

CEDENT. [from Lat. *cedens*, one who cedes or transfers.] In Scotch law. An assignor. 1 *Kames' Equity*, pref. *Id. 403. 2 Id. 351. Bell's Dict. voc. Assignment*.

CEDERE. Lat. In civil and old English law. To yield or give up; to assign or transfer; to cede. *Si quis ex sociis bonis suis cesserit*; if a partner make an assignment of his goods. *Inst. 3. 26. 8. Id. 4. 6. 40*.

To yield or give way to another, as superior; to go or pass with a thing, as an inferior or subordinate thing; to follow as a part of a thing; to belong to. Hence the compounds *accedere*, and *accessio*, (qq. v.)

To belong to a person; to be a subject of rightful claim by a person. *Quum tota dies cedat debitori*; since the whole of the day belongs to the debtor. *Fleta, lib. 3, c. 9, § 24*.

Cedere is of very frequent occurrence in the civil law. *Cedere solo, picturæ, vestimento, &c.*, to go with, or belong to the soil, painting, garment, &c. *Inst. 2. 1. 26, 32—34. Omne quod inædificatur solo cedit*. Every thing which is built upon [land] goes with or belongs to the land. *Id. 2. 1. 29. Dig. 41. 1. 10. Frumenta quæ sata sunt solo cedere intelliguntur*; grains which are planted are understood to belong to the soil. *Inst. 2. 1. 32*.

So, in Bracton, who borrows from the civil law:—*Tabula cedit picturæ*; the tablet goes with the painting. *Bract. fol. 10. Purpura cedit vestimento, jure accessionis*; the purple goes with the garment by right of accession. *Id. ibid. Minor cedit majori vel præcioriori*; the lesser goes with the greater, or more valuable. *Id. fol. 9 b*. And see the maxims *Aqua cedit solo, Bello parta cedunt reipublicæ*.

CEDULA. Lat. In old English law. A schedule. *Mem. in Scacc. T. 4 Edw. I*.

CEDULA. Span. In Spanish colonial law. A circular letter or order. *White's New Recop. b. 4, tit. 4*.

A bill or order. *Id. b. 3, tit. 7, ch. 5, § 3*.

CEDULE. Fr. In French law. A note in writing. *Poth. Oblig.* part 4, ch. 1, art. 2, § 1.

CEL. L. Fr. This. *A cel jour*; at this day. *Litt.* sect. 140, 217.

CELARIUM. L. Lat. In old English law. A cellar. *Fleta*, lib. 2, c. 5, § 6.

CELDRA, Celda. L. Lat. In old English law. A chaldron. *Chaldra. Prym.* 183. *Celda carbonum. Towns. Pl.* 172.

In old Scotch law. A measure of grain; a chalder. 1 *Kames' Equity*, 215. *Cowell. Celda frumenti. Id.*

CELERARIUS. L. Lat. In old English law. A steward of a monastery; a cellarer or bursar. *Bract.* fol. 318. *Fleta*, lib. 6, c. 37, § 3. *Blount.*

CEL, Cely. L. Fr. Such a one, (*talís*). *Celi se profri à tiel jour, vers cely*; such a one offers himself at such a day, against such a one. *Fet Assaver*, § 18.

CELUI, Celuy. L. Fr. He; him. *Celuy que fist le lease est appel lessor, et celuy a que le leas est fait est appel lessee.* *Litt.* sect. 57. *Appertient a celuy a que le fait est fait*; belongs to him to whom the deed is made. *Id.* sect. 375.

CENDULÆ. L. Lat. In old records. Shingles, (shindles, *scandulæ*). *Pat.* 4 H. III. p. 1, m. 10. *Cowell.*

CENEGILD. [Sax. *cynegild*; from *cyn*, relationship, kin, and *geld*, a payment.] In Saxon law. A mulct, or pecuniary composition paid by one who had killed another, to the relatives of the deceased, by way of expiation. *LL. Æthelstan*, c. 7. *Spelman.*

CENELLÆ. L. Lat. In old records. Acorns. *Cowell.*

CENNINGA. L. Lat. [from Sax. *cenning*, knowledge.] In Saxon law. Notice given by a buyer to a seller, that the thing sold was claimed by another, that he might appear and justify the sale. *Add. ad Leg. Inæ MS. apud Spelman.*

CENS. Fr. [Lat. *census*, q. v.] In old French and Canadian law. A tribute or payment imposed on a tenant; an annual payment or due (*redevance*), reserved to a seignior or lord, and imposed merely in recognition of his superiority. *Guyot, Inst. Feod.* chap. 9. *Dunkin's Address*, 39. Originally, a real and onerous tribute, but, in the course of ages, rendered light in amount, and in modern times, quite nominal. *Id. ibid.* It was distinguished from the *rentes*, which also formed the larger part of the yearly dues. *Id.*

An annual payment made by the pos-

sessors of a heritage, to the seignior of the fief, from whom it is held, in acknowledgment of his direct seigniority. Called also *censive*, or *fond de terre*. It consists in money, grain, fowls or other articles in kind. *Id.* 50.

A quit rent. *Steph. Lect.* 351.

CENSARIA. L. Lat. In old English law. A farm, or house and land let at a standing rent, (*ad censum*.) *Cowell. Blount.*

CENSARIL. L. Lat. Farmers. *Blount.* Or, according to *Cowell*, those who were liable to pay a tax, (*census*.) *Cowell. Domesday*, cited in *Blount.*

CENSERE. Lat. In the Roman law. To ordain; to decree. *Dig.* 50. 16. 111.

CENSIVE. Fr. [from *cens*, q. v.] In old French law. Tenure by *cens*; an estate held by the payment of a *cens*. *Guyot, Inst. Feod.* ch. 9. *Dunkin's Address*, 61.

CENSITAIRE. Fr. [from *cens*, q. v.] In old French and Canadian law. One who held by the title or tenure of *cens*, (*à titre de cens*); a tenant by *cens*. *Guyot, Inst.* ch. 9. *Dunkin's Address*, 34, et *passim*.

CENSO. Span. [from Lat. *census*, q. v.] In Spanish law. An annuity. *White's New Recop.* b. 2, tit. 7, § 4. 13 *Texas R.* 655.

Ground rent. *Schmidt's Civ. Law*, 149, 309.

CENSUALES. L. Lat. [from *census*, a rent or tribute.] In old European law. A species of the *oblati*, or voluntary vassals of churches or monasteries. Persons who paid an annual tax or quit rent out of their estate, to a church or monastery, in order to procure its protection, and who sometimes engaged to perform certain services. 1 *Robertson's Charles V. Appendix*, note xx.

CENSUERE. Lat. In the Roman law. They have decreed. The term of art, or technical term for the judgment, resolution or decree of the senate. *Tayl. Civ. Law*, 566. See *Censere*.

CENSUMORTHIDUS. L. Lat. A dead rent; the same as mortmain. *Cowell. Holthouse.*

CENSUS. Lat. In the Roman law. A numbering or enrolment of the people, with a valuation of their fortunes, (*personarum et bonorum descriptio*.) *Brissonius.*

The right of being enrolled in the censor's books. *Butler's Hor. Jur.* 27.

CENSUS. L. Lat. In old European law. A tax, or tribute, (*tributum*); a toll. *Esprit des Loix*, liv. 30, c. 14.

A particular tax imposed on bondmen by their masters. *Id.* c. 15.

A yearly payment or rent. See *Censaria*, *Censuales*.

A yearly income or revenue. *Census regalis*; the king's or royal revenue. *Hale's Anal.* sect. vii. 1 *Bl. Com.* 306. 2 *Steph. Com.* 564.

CENTENA. L. Lat. [from *centum*, a hundred.] A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks and Lombards, for military and civil purposes, and answering to the Saxon *hundred*. *Spelman*. 1 *Bl. Com.* 115. *Esprit des Lois*, liv. 30, c. 17. The Saxon division is also sometimes called *centena*, but is more commonly rendered in law Latin, *hundredum*, or *hundredus*. *Spelman*, *ubi sup.* See *Hundred*, *Hundredum*, *Centenarius*, *Centeni*.

CENTENA. L. Lat. In old records and pleadings. A hundred weight. *Centena piscium*; a hundred weight of fish. *Pryn.* 303. *Centena cereæ, zucarii, piperis, cumini*, &c. *continet tredecim petras et dimidium*; the hundred weight of wax, sugar, pepper, cummin, &c., contains thirteen stone and a half. *Fleta*, lib. 2, c. 12, § 4. See *Cro. Eliz.* 754.

CENTENARIUS. L. Lat. [Fr. *centenier*, from *centena*, q. v.] In old European law. One of a *centena*, or hundred; the head or chief of a *centena*, (*præfectus centenæ*), among the Goths, Germans, Franks and Lombards; an inferior judge. See *infra*.

* * According to *Spelman*, this term was originally used to denote any member of a *centena*, but was finally restricted to the head or chief; (*centenarius primo dictus est unusquisque ex eadem centenâ, demum præfectus tantum*), who, in addition to his military rank as leader of the freemen of the *centena*, under the *comes*, or count, had also judicial powers, and held courts answering to the hundred courts among the Saxons. *Spelman*, *loc. cit.* *Esprit des Lois*, liv. 28, c. 28; liv. 30, c. 17, 18, 22. See *Centenarii*. In the laws of the Anglo-Saxons, the term *centenarius* was applied to that judicial magistrate (otherwise called *centurio*), who had jurisdiction over a hundred friborgs, or ten tithings; afterwards called bailiff or constable of the hundred, (*dominus hundredi*). *LL. Edw. Confess.* c. 32, *apud Spelman*. 1 *Bl. Com.* 115.

CENTENARII. L. Lat. [plur. of *cen-*

tenarius, q. v.] In old English law. The freeholders of a hundred; (*liberi tenentes qui in centena degunt*;) hundredors. *Spelman*, *loc. cit.*

CENTENI. Lat. [from *centum*, a hundred.] A hundred men; hundred men. The number of men enrolled for military service from each district, among the ancient Germans, and which afterwards became their distinctive name. *Centeni ex singulis pagis sunt*; *idque ipsum inter suos vocantur*; *et quod primo numerus fuit jam nomen et honor est*; there are a hundred [fighting] men from each district; and they are called the same thing [i. e. hundred] among their companions; and what was at first a mere number is now a name and a distinction. *Tacitus de Mor. Germ.* c. 6. *Spelman*, *loc. cit.* This is supposed to be the origin of the military and civil divisions called *centena*, or hundredes. *Ibid.* 1 *Bl. Com.* 115, 116.

CENTESIMA. Lat. [from *centum*, a hundred.] In the Roman law. One per cent. monthly, or twelve per cent. *per annum*. In calculating the rate of interest, the Romans divided the principal sum into a hundred parts, one of which they allowed to be taken monthly; and this, which was the highest rate of interest permitted, they called *usura centesima*, amounting yearly to twelve per cent. 2 *Bl. Com.* 462, note (m).

CENTRAL CRIMINAL COURT. An important court established in London in 1834, by statute 4 & 5 Will. IV. c. 36, and to which the entire criminal jurisdiction of the court of admiralty was transferred. 4 *Steph. Com.* 331. *Wharton's Lex. Warren's Law Studies*, 365.

CENTUMVIRI. Lat. A hundred men. The name of a Roman court consisting of a hundred judges, to whom belonged the decision of the most important questions of law, such as those relating to inheritances, wills, guardianships, sales, the enjoyment of party walls, windows, the drip of water, and numerous other important subjects, which were called *causæ centumvirales*. *Cic. de Orat.* i. 38, 39. *Plin. Epist.* ii. 14. 3 *Bl. Com.* 315. Properly there were 105 judges, three being chosen from each of the thirty-five tribes; but they were always named by a round number, *centumviri*. *Festus*.

CEO. L. Fr. [Lat. *hoc*.] This; that; (plur. *ceux*.) *Et ceo voil jeo averer, la ou il duist dire et ceo profre jeo a profer*;

"and this I will aver," where he should say, "and this I offer to prove." *Britt. c. 22. Ceo oyes vous home qui jeo teigne par la mayn*; hear this you man whom I hold by the hand. *Id. ibid. Ceo vous monstre*; this shows to you; (Latinized in Bracton, *hoc ostendit vobis. Bract. 296 b, 372 b.*) The beginning of a declaration, when in French, and actually pronounced in court; as it occurs in the Year Books, before the thirty-sixth year of Edward III. "This showeth unto you A. who is here, that B. who is there, unjustly detains from him," &c. 3 *Reeves' Hist. Eng. Law*, 59. See *Yearb. T. 1 Edw. II. 9. Crabb's Hist.* 217. *Steph. Pl.* 422, (Am. ed. 1824.) *Id. Appendix, Note (75).*

Coe is a corrupted form of this word, used throughout the tract called *Fet Assaver*.

CEORL, *Carl, Churl*. Sax. [L. Lat. *ceorlus, cirulus, ciriliscus*.] A freeman of inferior rank, chiefly employed in husbandry; a husbandman; (Lat. *rusticus, paganus*.) *Spelman, voc. Ceorlus. LL. Ina*, cc. 38, 42, 52, cited *ibid.* A tenant at will of free condition, among the Anglo-Saxons, who held land from the thane, on condition of rents and services. *Cowell, voc. Churle. 1 Reeves' Hist. Eng. Law*, 5. The ceorls are mentioned in the earliest Saxon codes, and in the later charters, under the names of *cassati, manentes, tributarii*. 1 *Spence's Chancery*, 50, 51, and notes. Mr. Barrington considers the word synonymous with *villains*. *Obs. Stat.* 302.

Churl, one of the forms of this word, (and probably pronounced *curl*, with the *ch* hard,) has, like the corresponding term *villain*, among the Normans, become a term of reproach. *Spelman, ubi sup.*

CEP, *Ceppe*. L. Fr. In old English law. Stock; a stock. *Del common cep*; of a common stock. *Britt. c.* 119.

CEPER. L. Fr. In old English law. A gaoler. *LL. Gul. Cong.* l. 4.

CEPI CORPUS. L. Lat. (I have taken the body.) In practice. The technical name of the return made by a sheriff to a *capias*, that he has taken the body of the party. *F. N. B.* 26. 3 *Bl. Com.* 288. 1 *Tidd's Pr.* 308—310. See *Capias*. It is derived from the two emphatic words of the return which was anciently endorsed in law Latin on the writ.

Cepi corpus properly is the return where the defendant is out on bail; where he is in actual custody, the return is *cepi corpus in custodia*. 1 *Tidd's Pr.* 308, 309. *Sew-*

ell's Law of Sheriff, 387. *Cepi corpus et paratum habeo*, (I have taken the body and have it ready,) is another form of this return, which anciently implied that the party was in actual custody, but is now the proper return where the defendant has been arrested and discharged on bail. *Id. ibid. 1 Tidd's Pr. ubi supra.*

CEPIT. Lat. [from *capere*, to take.] In pleading. (Took, or he took.) The emphatic word formerly used in writs of trespass for taking personal property, and in declarations in replevin and trespass; and literally translated in the modern forms of those pleadings. See *infra*. The Latin word is still used as descriptive of the action in certain cases. Thus, in replevin, when the action is for the taking only, it is said to be "in the *cepit*." 3 *Hill's (N. Y.) Rep.* 282, 348. 3 *Comstock's R.* 506.

CEPIT ET ABDUXIT. L. Lat. In old English practice. (Took and led away.) The emphatic words in writs of trespass, where the writ was for live things, as animals. *Reg. Orig.* 92, 163. *F. N. B.* 86 A, note. *Id.* 88 B.

CEPIT ET ASPORTAVIT. L. Lat. In old English practice. (Took and carried away.) The emphatic words in writs of trespass, where the writ was for dead things. *F. N. B.* 86 A, note. *Id.* 88 B. Literally translated in modern declarations in trespass, and in indictments for theft. 4 *Bl. Com.* 231. *Cepit et abcaravit* was a different form of the same expression. *Towns. Pl.* 166, 167.

CEPIT IN ALIO LOCO. L. Lat. In pleading. [He] took in another place. The name given to a plea in the action of replevin, which should be pleaded where the defendant desires a return of the cattle taken. 1 *Chitt. Pl.* 499. 3 *Id.* 1045.

CEPPAGIUM. L. Lat. [from Fr. *cep, ceppe*, a stock or root.] In old English law. The stumps or roots of trees which remain in the ground after the trees are felled. *Fleta*, lib. 2, c. 41, § 24.

CEPPE. L. Fr. Stock. *Les deux freres sont en une ceppe. Yearb. H. 2 Edw. II.* 31.

CERA. Lat. In old English law. Wax; a seal of wax. *Brevia sua porrigunt in cera*; deliver their writs in wax, [under seal]. *Stat. Westm.* 2, c. 10.

CERE. L. Fr. [from Lat. *cera*, q. v.] Wax; a seal. *Ove cere affix.* 1 *And.* 54.

CEREVISIA. *Cervisia*. L. Lat. In old English law. Ale or beer. See *Cervisia*.

CERISARIUS. L. Lat. In old English law. A cherry tree. *Fleta*, lib. 2, c. 82, § 2.

CERT MONEY. [*quasi* certain money.] In old English law. Head money or common fine. Money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, (*pro certo letæ*); and sometimes to the hundred. *Blount*. 6 Co. 78, *Bullen's case*.

CERTA RES. Lat. In old English law. A certain thing. *Fleta*, lib. 2, c. 60, §§ 24, 25.

CERTAIN. [Lat. *certus, certum*.] Clear or distinct; as opposed to obscure. *Steph.* Pl. 380, note (a).

Particular; as opposed to general. *Id.* *ibid.* 132.

Limited, specified, defined; as opposed to indefinite. See *Certainty*.

"To put in certain," (L. Fr. *mitter en certaine*.) *Litt.* sect. 137. "To put into certainty," (L. Lat. *ad certitudinem ponere*;) to reduce to certainty. *Co. Litt.* 96 a. *Mys en certain*; ascertained. *Dyer*, 55 b. (Fr. ed.)

CERTAIN SERVICES. In feudal and old English law. Such services as were stinted (limited or defined,) in quantity, and could not be exceeded on any pretence; as to pay a stated annual rent, or to plough such a field for three days. 2 *Bl. Com.* 61.

CERTAINTY. [L. Lat. *certitudo*.] In pleading. Clearness or distinctness; as opposed to obscurity or ambiguity.

Particularity; as opposed to undue generality. *Steph.* Pl. 132, 380, note.

Lord Coke distinguishes three kinds of certainty; first, certainty to a common intent, [that is, according to reasonable intentment or construction, *Steph.* Pl. 380:] which is sufficient in a bar [plea,] which is to defend the party, and to excuse him: secondly, certainty to a certain intent in general, which is sufficient in counts, [declarations,] replications, and other pleadings of the plaintiff: thirdly, certainty to a certain intent in every particular, which is required in estoppels. *Co. Litt.* 303 a. 1 *Tidd's Pract.* 451. Certainty to a certain intent in general, is ordinarily sufficient in the construction of statutes. 1 *Ken's Com.* 462, note.

CERTIFICARE. L. Lat. [from *certus*, certain, and *facere*, to make.] In old practice. To certify; to make certain; to give information.

CERTIFICATE. [L. Lat. *certificatorium*, from *certificare*, q. v.] In practice.

A writing made in any court, to give notice to another court of any thing done therein. *Cowell. Blount. Termes de la Ley*. A writing signed by the judges of a court, or a single judge, or by an officer of the court, certifying to, or giving formal and official notice of certain facts; generally, for the use of another court, judge or officer.*

CERTIFICATE FOR COSTS. In practice. A certificate granted by a judge before whom a cause has been tried, stating some matter of fact which is necessary to be ascertained in order to fix the amount of the costs.* 1 *Tidd's Pr.* 792, 952. 3 *Steph. Com.* 631, 640. 3 *Wooddes. Lect.* 148. 3 *Chitt. Gen. Pr.* 458.

CERTIFICATE OF REGISTRY. In maritime law. A certificate of the registration of a vessel according to the Registry Acts, for the purpose of giving her a national character. 3 *Steph. Com.* 274. 3 *Ken's Com.* 139—150. *Abbott on Ship.* [72], 89, (Perkins' ed.) Sometimes confounded with the register itself, although it is only an abstract of it. *Act of Congress*, 31 Dec. 1792, § 9. It is a custom-house document, and one of the most important of a ship's papers, though it is not required by the law of nations as expressive of a ship's national character. 4 *Taunt.* 367. 3 *Ken's Com.* 149. See *Register*.

CERTIFICATION. In Scotch practice. A term used in judicial writs, to express the penalty annexed to the disregard of the order contained in the writ. *Bell's Dict.*

CERTIFICATION OF ASSISE OF NOVEL DISSEISIN. [L. Lat. *certificatio assise nove disseisinæ*.] In old English practice. A writ formerly granted for the re-examination or review of a matter passed by assise before any justices, where some point of the assise had been overlooked, or not sufficiently examined. *Reg. Orig.* 200. *Cowell. Blount.*

CERTIFICATORIUM. L. Lat. In old practice. A certificate. *Clerke's Praz. Cur. Adm.* tit. 29.

CERTIORARI. L. Lat. [*certior fieri*, to be made more certain; to be certified, or more distinctly informed.] In practice. A writ, used generally for the purpose of removing causes, before trial or judgment, from inferior to superior courts. It is issued out of the superior court, (or, in England, out of the court of chancery,) and is directed to the judges or officers of the

inferior court, reciting the will of the king or people to be certified of the proceeding, (*quia certis de causis CERTIORARI volumus, &c.*) and commanding the record to be sent or returned before them. See the old forms, *Reg. Orig.* 284. *F. N. B.* 242 b, *et seq.* It may be had either in criminal or civil cases. 3 *Steph. Com.* 703. 4 *Bl. Com.* 265, 272, 320. 1 *Tidd's Pr.* 397. *Bac. Abr.* Certiorari, A. *Com. Dig.* Certiorari, A. It lies also as an auxiliary process on writs of error, where the whole of the record is not certified by the court below, to obtain a complete return. 2 *Tidd's Pr.* 1167. *U. S. Dig.* Certiorari, I. And it lies (in place of a writ of error) after judgment, to review the judgments of inferior courts and judges, when they act in a summary way, or in a new course different from the common law. 1 *Tidd's Pr.* 400. 2 *Id.* 1134.

In American practice, a *certiorari* is used as a mode of appeal from the judgments of courts not of record. 2 *Burr. Pr.* 193. *U. S. Dig.* Certiorari, I. It is also the proper process for correcting any error that may have occurred in the proceedings of an inferior court, when such proceedings are, in any stage of them, different from the course of the common law, unless some different process is given by statute. *U. S. Dig.* Certiorari, I, 2, 3, *et seq.* and the cases there cited. Its application also is not confined to the decisions of courts, properly so called, nor to proceedings in actions, but comprehends the determinations of special tribunals, commissioners, magistrates and officers exercising judicial powers affecting the property or rights of the citizen, and who act in a summary way, or in a new course different from the common law, and also the proceedings of municipal corporations in certain cases. *Paige, Senator*, 25 *Wendell's R.* 167. 9 *Hill's R.* 9, 14.

CERTITUDO. L. Lat. [from *certus*, certain.] Certainty. *Fleta*, lib. 4, c. 17, § 1. *Talis certitudo certitudinem confundit*; such [nice and captious pretence of] certainty confounds [true and legal] certainty. 8 *Co.* 112.

CERTITUDINALITER. L. Lat. In old practice. Certainly. *Reg. Orig.* 22.

CERTUM. Lat. Certain. See *Certain*. [Id] *certum est quod certum reddi potest.* That is certain, which can be made certain, or is capable of being reduced to a certainty. 9 *Co.* 30. *Co. Litt.* 96 a. Lord El-

lenborough, 2 *M. & S.* 50. *Broom's Max.* [481.] Thus, if a man make a lease to another, for so many years as J. S. shall name, it is a good lease for years; for though it is at present uncertain, yet when J. S. has named the years, it is then reduced to a certainty. 6 *Co.* 35 b. 2 *Bl. Com.* 143. 1 *Steph. Com.* 267. The same maxim has been applied to a custom, a conveyance, an award, a contract for the sale of goods, a contract for the performance of labor, and an indenture of apprenticeship. *Broom's Max.* 416, and note (*f*), [481—485, 4th ed.] and cases there cited. 6 *Ad. & Ell.* N. S. 152, 566. *Story on Bailm.* § 375.

Another form of this maxim is *Certum est quod certo reddi potest.* That is certain which can be reduced to a certainty. Cowper, Lord C. 3 *Rep. in Ch.* 142.

CERTUS. *Certa.* Lat. Certain; defined; particularly described or specified. *Oportet quod certa res deducatur in donationem, quia incerta rei nulla est donatio*; it is necessary that the thing which is the subject of the gift should be certain, because the gift of an uncertain thing is null. *Bract.* fol. 15 b. *Fleta*, lib. 3, c. 7, § 2. See *Id.* lib. 2, c. 60, § 24. *Certa debet esse intentio, et certum fundamentum, et certa res quæ deducitur in judicium*; the count ought to be certain, and its foundation certain, and the thing which is brought into court certain. *Bract.* fol. 240. See *Fleta*, lib. 5, c. 13, § 1.

CERVISARIL. L. Lat. [from *cervisia*, q. v.] Certain tenants among the Saxons, who were liable to a duty called *drinclean*, which was a contribution towards providing ale (*cervisia*) to entertain the lord or his steward. *Domesday.* *Blount.*

CERVISIA. L. Lat. [L. Fr. *cervoise*.] In old English law. Ale or beer, properly the former. *Reg. Orig.* 280. *Bract.* fol. 117 b. *Fleta*, lib. 2, c. 11. *Cervisia lupulata*; beer. *Towns. Pl.* 234. *Una mensura cervisiæ*; one measure of ale. *Magna Charta*, 9 Hen. III. c. 25. See *Britt.* c. 30. *Cervisiæ*; ales. *Bract.* fol. 117 b. A computation or entertainment. *Fleta*, lib. 1, c. 20, § 102. See *Filetale*.

CERVISIARIUS. L. Lat. [from *cervisia*, q. v.] In old records. An ale-house keeper. *Towns. Pl.* 267.

A beer or ale brewer. *Blount*, voc. *Cervisarii*.

CERVUS. Lat. A stag or deer. *Et vulgariter dicitur, quod primò oportet certum capere, et postea, cum captus fuerit,*

illum excoiare; and it is a common saying that you must first catch your stag and then skin him. *Bract.* fol. 191.

CESIONARIO. Span. In Spanish law. An assignee. *White's New Recop.* b. 3, tit. 10, ch. 1, § 3.

CESS. In old English law. To cease. *Hale's Anal.* sect. xxxviii.

CESSANTE. See *Cessare*.

CESSARE. L. Lat. To cease; to stop, or stay. *Cessante causa, cessat effectus.* The cause ceasing, the effect ceases also. *Bract.* fol. 202. 4 Co. 38. *Finch's Law*, b. 1, ch. 3. *Broom's Max.* 68, [118.] *Shep. Touch.* 287. *Bacon's Works*, iv. 344. *Cessante ratione legis, cessat et ipsa lex.* The reason of the law ceasing, the law itself ceases also. *Co. Litt.* 70 b. 2 *Bl. Com.* 390, 391. *Broom's Max.* 68, [118.]

To come to an end, or determine, as an estate. *Cessante statu primitivo, cessat derivativus.* When the primitive or original estate determines, the derivative estate determines also. *Shep. Touch.* (by Proston,) 155. 4 *Kent's Com.* 32. *Broom's Max.* [372.] Applied to the cessation of the estates of dower and curtesy, on the determination of the principal estate out of which they are derived. *Id. ibid.* 8 Co. 67. See *Determine*.

To cease or neglect; to *cess*, in the old books. *Cowell*, voc. *Cessor*. *Cessavit per biennium* (q. v.); he ceased or neglected for two years. See *infra*.

CESSAVIT PER BIENNIUM. L. Lat. (He ceased for two years.) In old English practice. A writ in the nature of a writ of right, founded upon the doctrine of tenure, and formerly a very common remedy. *Roscoe's Real Actions*, 31, 32. 2 *Reeves' Hist. Eng. Law*, 326. It lay first, upon the statute of Gloucester, (6 *Edw.* I. c. 4,) which gave it to the lord against the tenant in fee, who *ceased for two years* to pay and perform his fee farm rent and services, extended by the statute of Westminster 2, c. 21, to other rents and services: and secondly, upon the statute of Westminster 2, c. 41, where land was given for a chantry (*cantaria*), light, sustenance of poor people, &c., and the alms were withdrawn for the space of two years. *Reg. Orig.* 237 b. *F. N. B.* 208 H. *Roscoe's Real Actions*, 32, 33. 2 *Reeves' Hist. Eng. Law*, 145. 3 *Id.* 50. 3 *Bl. Com.* 232. This writ did not lie, unless the land had lain fresh and uncultivated for two years (*biennium*), and there was not a sufficient dis-

tress upon the premises, or unless the tenant had so enclosed the land that the lord could not come upon it to distrain. 2 *Inst.* 296. *Roscoe's Real Actions*, ubi supra.

CESSE. In old English law. An assessment, exaction or tax. *Stat.* 22 Hen. VIII. c. 3. *Cowell*.

CESSER, Cessure. Neglect; a ceasing from, or omission to do a thing. 3 *Bl. Com.* 232. "A substantial dismission and ceaser." 6 *Mod.* 232.

The determination of an estate. 1 Co. 84. 4 *Kent's Com.* 33, 90, 105, 295.

CESSET EXECUTIO. L. Lat. (Let execution stay.) In practice. A stay of execution; or an order for such stay; the entry of such stay on record. 2 *Tidd's Pr.* 1104. 3 *Wooddes. Lect.* 8.

CESSET PROCESSUS. L. Lat. (Let the process stay.) In practice. A stay of the process or proceedings on an issue; the entry on record, of a stay of the process. 11 *Mod.* 231—234.

CESSIO. Lat. [from *cedere*, to give up, or yield.] A cession, giving up or surrender; an assignment. 1 *Kames' Equity*, 403. See *Cessio bonorum*.

CESSIO BONORUM. Lat. In the Roman law. A cession, or giving up of goods. The surrender of all a debtor's property to his creditors, by which, under the law of cession introduced by the christian emperors, he obtained an exemption of his person from imprisonment, and all bodily punishment, (*omni quoque corporali cruciatu semoto*). *Cod.* 7. 71. 8. 2 *Bl. Com.* 473. This term is now applied, in the modern jurisprudence of most of the states of Europe, and also in American law, to the surrender of an insolvent's estate and effects to his creditors. *Ersk. Inst.* b. 4, tit. 3, § 26. *Bel's Dict.* 3 *Burge's Col. & For. Law*, 890, et seq. 1 *Kent's Com.* 422, 247. 2 *Id.* 396, note.

CESSION. [from Lat. *cessio*, q. v.] A giving up, relinquishment or abandonment of a right, or of property. See *Abandonment*.

In the civil law. A giving up, surrender or assignment of goods to, or for the benefit of creditors. See *Cessio bonorum*.

In ecclesiastical law. A giving up, or vacating a benefice, by accepting another without a proper dispensation. 1 *Bl. Com.* 392. *Latch*, 234. 4 Co. 78. *Dygb's case*.

CESSIONARY, Cessioner. In Scotch law. An assignee. *Bel's Dict.* voc. *Assignment*.

CESSOR. In old English law. One who ceased or neglected so long to perform

a duty belonging to him, as to incur the danger of the law, and to become liable to have a writ of *cessavit* brought against him. *Old Nat. Brev.* 136. *Cowell.*

CESSURE. L. Fr. A receiver; a bailiff. *Kelham.*

CESSURE. See *Cesser.*

CEST ASCAVOIR. L. Fr. That is to say, or to wit; this is to be known. Generally written as one word, *cestascavoir*, *cestascavoire*, *cestassavoir*. *Stat. Westm.* 1, c. 22. *Artic. sup. Chart.* c. 1. *Litt. sect.* 13, 239. *Yearb.* P. 8 Edw. II. 275. Another form was *cest asaver*. *Britt.* c. 126. And, in one word, *cestasaver*. *Id.* c. 22. *Co est a saveir* occurs in *LL. Gul. Conq.* l. 1, pr. *Si est assaver* occurs in *Fet Assaver*, § 22.

CESTR'. An abbreviation of *Cestria*, Cheshire, in old English pleadings and records. *Towns. Pl.* 147. 1 *Inst. Cler.* 28.

CESTUI, Cestuy. L. Fr. He. *Cestuy que doit enheriter al pere, doit enheriter al fitz.* He who would have been heir to the father, shall be heir to the son. *Yearb.* M. 12 Edw. IV. 14, [12.] 2 *Bl. Com.* 223, 239, 250.

CESTUY QUE USE. L. Fr. [*Cestuy a l'use de qui*; Lat. *ille cujus usui*, or *ad cujus usum*.] He to whose use another is enfeoffed of lands or tenements. *Cowell.* 2 *Bl. Com.* 328—333. 4 *Kent's Com.* 289—296. 1 *Steph. Com.* 332. *Cestuy a que use.* *Dyer*, 57 b. The substantial and beneficial owner, as distinguished from the feoffee to uses. *Id.* See *Use*, *Feoffee to uses*.

CESTUY QUE TRUST. L. Fr. He in trust for whom, or for whose benefit, another is enfeoffed or seised of lands or tenements; he who is entitled in equity to take the rents and profits of lands whereof the legal estate is vested in some other person who is called the trustee; or, in other words, he who is the real, substantial and beneficial owner of lands which are held in trust, as distinguished from the trustee. *Holthouse. Whishaw.* 1 *Cruise's Dig.* 381, tit. 12, c. 1. 1 *Steph. Com.* 343. 4 *Kent's Com.* 301—305. See *Trust*, *Trustee*.

* The late Mr. Justice Story has observed of this phrase, that it is "a barbarous Norman Law-French phrase, and is so ungainly and ill adapted to the English idiom, that it is surprising that the good sense of the English legal profession has not long since banished it, and substituted

some phrase in the English idiom, furnishing an analogous meaning." 1 *Story's Eq. Jur.* § 321, note. *Fide-commissary* and *beneficiary*, (the former adapted from the *fidei-commissarius* of the Roman law,) are the terms suggested by the same author as proper substitutes. *Id. ibid.* See *Beneficiary*. With deference, however, to the criticism of this eminent jurist, the phrase in question seems little more awkward than the similarly formed expressions *cestuy que use*, and *cestuy que vie*, and other terms of Norman origin now in daily use, for which no English equivalents have been sought or desired. Indeed, the mere fact that these terms and phrases, with all their apparent rudeness of construction and want of harmony with the English idiom, have nevertheless been scrupulously retained in modern law and practice, seems to warrant the inference that their essential convenience and expressiveness have always been found effectually to outweigh any objections of the kind alluded to.

CESTUY QUE VIE. L. Fr. (*cestuy a qui vie*.) He for whose life lands or tenements are granted. Thus if A. grant lands to B. during the life of C., here C. is termed the *cestuy que vie*, and B. tenant *pur autre vie*, (q. v.) 2 *Bl. Com.* 123. 1 *Steph. Com.* 242.

CEU. L. Fr. This; that. *Kelham.* A corruption, probably, of *ceo*, (q. v.)

Knowledge. *Saunz le ceu*; without the knowledge. *Kelham.* A corruption of *sceu*, or *sceau*.

CEULS. L. Fr. Those. *Kelham.* See *Ceux*.

CEUX, Ceaux. L. Fr. These; those. *Ceux parolz*; these words. *Litt. sect.* 1.

CHACE. See *Chase*.

CHACE. L. Fr. A chase or hunting ground. *Tout le bois ou il se plaint est comon chace de tous beasts chaceable a toutz gentz*; all the wood where he complains is a common chase of all beasts that may be hunted by everybody. *Yearb.* P. 10 Edw. III. 28.

CHACEA, Chasea, Chacia, Chaicia. L. Lat. [from Fr. *chasser*, to drive.] In old English law. A chase, or chase; a driving, chasing or hunting [of animals]; (Lat. *fugatio, actus*.) *Spelman. Reg. Orig.* 258. A driving of animals to pasture; the right or privilege of driving. *Fleta*, lib. 4, c. 20, § 5.

The road or way by which cattle are driven to pasture; called also a drove,

drove-way or drift-way, (Lat. *actus*, q. v.) *Spelman*. *Bract.* fol. 227 b, 232.

A station of game, or hunting ground, (Lat. *fugacia*;) an extent of ground less than a forest, and larger than a park, where wild animals are kept for the diversion of the chase, (*saltus et ipsa statio qua, venationis gratia, aluntur fera.*) *Spelman*. See *Chase*.

CHACEABLE. L. Fr. That may be chased or hunted. *Yearb.* P. 10 Edw. III. 28. See *Chace*.

CHACEARE. L. Lat. In old English law. To chase, drive, or hunt. *Cowell*.

CHACER, *Chaser*. L. Fr. To drive, compel, oblige. *Chace, chase*; obliged, compelled, driven. *Il fuit chace ouster*; he was driven [to plead] over. *Yearb.* M. 5 Edw. III. 125. See *Chaser*.

To chase or hunt. *Per que no' chaceamus come bien no' list*; wherefore we hunted, as it was lawful for us to do. *Yearb.* P. 10 Edw. III. 28.

CHAFEWAX. [*chafe*, Fr. *chaffer*, to heat.] An officer in chancery in England who fits (by *heating* or melting) the wax for the sealing of writs and other instruments. *Cowell*.

CHAFFERS. A word used in the English statute 3 Edw. IV. c. 4, and supposed to mean wares or merchandize, *Cowell*. *Blount*. *Cowell* says, "we yet use *chaffering* for buying and selling." In modern parlance, the latter word rather denotes a bargaining, or negotiating the terms of a bargain. *Webster*.

CHAIER. L. Fr. To fall. *Lesser chaier*; to let fall. *Kelham*. See *Cheir*.

CHALLENGER. L. Fr. In old English law. To object or except to a writ or pleading. *Par taunt est le breve vicious et abatable, si il soit challenge*; for so much is the writ bad and abatable, if it be challenged. *Britt.* c. 84. *Et si le counte soit challenge pur le omission*; and if the count be challenged for the omission. *Id.* c. 85.

To object or except to a person, as a juror. *Britt.* c. 52.

To claim, or demand as a right. *Et come deux seignours ou plusieurs chalengent mariage*; and where two or more lords challenge (claim) the marriage. *Britt.* c. 67. *Si nul autre ust challenge l'heritage*; if no other person have challenged (claimed) the inheritance. *Id.* c. 70.

CHALLENGE. [L. Fr. *challenge*, from *challenger, calanger*, to object, to claim; L. Lat. *calumnia, calangia*; *exceptio*.] In

practice. An exception or objection taken either against persons or things. *Cowell*. The word had this large sense in old practice, a writ or count being as proper a subject of challenge as a juror. See *Challenger*. In modern practice, however, its signification has been materially narrowed, and it is now almost exclusively used to denote

An exception or objection taken to the jurors summoned and returned for the trial of a cause, either individually, (to the polls), or collectively, (to the array). See *infra*.

Bracton, in treating of the law of challenge, (which has undergone comparatively little change since his time,) employs neither *calumnia* nor *calangia* to designate the objection taken, but calls it *exceptio contra juratores*. *Bract.* fol. 185. In Britton, the word *challenge* (from which is derived the modern term *challenge*) is introduced. *Britt.* c. 52.

To CHALLENGE. [L. Fr. *challenger, calenger, calanger*; L. Lat. *calumniare, calumpniare*.] In old English law. To claim or assert a right. "I, Henry of Lancaster, challenge this rewme [realm] of Ynglond." 1 *How. St. Trials*, 152. See *Challenger*.

In practice. To call to answer; to accuse; to appeal, in the ancient sense of the word. See *Appeal*, and see *infra*.

To dispute or call in question another's right; hence to object or except to.

To object or except to a person. To except against those that are returned to be jurors. *Co. Litt.* 155 b. This is the proper signification of the term in modern practice.

* * The etymology of this word has been variously explained. The Fr. *challenger*, from which it is immediately derived, was used in several senses, as given under that word, *supra*. Lord Coke traces it, through the L. Lat. *calumniare, calumpniare*, and *calumpniare*, from the old Fr. *caloir* or *chaloir*, to care for or foresee. *Co. Litt.* 155 b. Mr. Crabb inclines to derive it from *call*, "to challenge," meaning "to call or single out" a person by way of objection to him. *Crabb's Hist. Eng. Law*, 299. This derivation is adopted by Webster, (who explains *challenge* to mean "to call off a juror or jurors," "to demand that a juror shall not sit in trial upon a cause;") and receives great support from the fact that *appel*, the French word for challenge,

is derived from the Latin *appellare*, to call upon, to call by name.

The practice of challenging jurors is mentioned by Blackstone as answering to the *recusatio judicis*, (rejection of a *judez*,) in the civil and canon laws. *Cod.* 3. 1. 16. *Decretal.* lib. 2, tit. 28, c. 36. Mr. Spence goes further, and speaks of "the Roman right of challenge" as introduced into England or confirmed at the Conquest. 1 *Spence's Chancery*, 106. There was a usage of the middle ages, however, which, from its connection with the old trial by peers, and the judicial combat, as well as its bearing upon the present popular sense of the term *challenge*, deserves a passing notice. This was the proceeding called an *appeal of false judgment*; by which a party dissatisfied with the judgment of a court was allowed to *appeal the peers* of whom the court was composed, that is, to *challenge and fight* them. *Espit des Lois*, liv. 28, c. 27. *Beaumanoir*, c. 61, 67. *Defontaines*, ch. 21, 22, cited *ibid.* See *Appeal of false judgment*.

CHALLENGE TO THE ARRAY. An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return.* 2 *Bl. Com.* 359. *Co. Litt.* 155 b, 156 a. *Wharton's Am. Crim. Law*, 599. See *Array, Panel*.

CHALLENGE TO THE POLLS. [L. Fr. *à les testes*; Lat. *in capita*, against the individuals.] An exception to any one or more of the individuals returned as jurors on the trial of a cause, as not being indifferent between the parties. *Termes de la Ley.* *Co. Litt.* 156 a. 3 *Bl. Com.* 361. The grounds of this kind of challenge, or rather of principal challenges to the polls, are reduced by Lord Coke under four heads:—*propter honoris respectum, propter defectum, propter affectum and propter delictum*, (qq. v.) *Co. Litt.* 156 b.

CHALLENGE PEREMPTORY. A privilege allowed to a prisoner in criminal cases, of challenging peremptorily a certain number of jurors, without assigning any cause. *Termes de la Ley.* 4 *Bl. Com.* 353. *Co. Litt.* 156 b. This is called by Blackstone "an arbitrary and capricious species of challenge," and is permitted in capital cases in *favorem vitæ*. 4 *Bl. Com.* 353. *Co. Litt.* 156 b. The number of peremptory challenges allowed by the law of England

is thirty-five in cases of treason, and twenty in cases of felony. 4 *Bl. Com.* 354. 4 *Steph. Com.* 424. *Stat. 22 Hen. VIII.* c. 14. *Stat. 6 Geo. IV.* c. 50, s. 29. The same numbers were adopted by the Act of Congress, April 30, 1790, sec. 30. For the provisions made by the laws of the different states on this subject, see *Wharton's Am. Crim. Law*, 602, 604. And see *United States Digest*, Jurors, I.

CHALLENGE FOR CAUSE. [L. Fr. *pur cause*.] A challenge for which some cause or reason is alleged. *Termes de la Ley.* 4 *Bl. Com.* 353. Thus distinguished from a peremptory challenge.

CHALLENGE PRINCIPAL. A species of challenge to the polls, so called, according to Lord Coke, because if it be found true, it stands sufficient of itself, without leaving any thing to the conscience or discretion of the triers. *Co. Litt.* 156 b. Or, according to Sir Wm. Blackstone, (who confines it to the species of challenge *propter affectum*,) it is so called from the circumstance that the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favor, and which, if true, cannot be overruled. 3 *Bl. Com.* 363. See 4 *Id.* 353.

A species of challenge to the array, as distinguished from a challenge to the favor. *Co. Litt.* 156 a.

CHALLENGE TO THE FAVOR, OR FOR FAVOR, is where the party has no principal challenge, but objects only some probable circumstances of suspicion, as acquaintance, and the like, the validity of which must be left to the determination of triers, whose office it is to decide whether the juror be favorable or unfavorable. 3 *Bl. Com.* 363. 4 *Id.* 353.

* * There is some confusion in the books, in regard to classifying the various subdivisions of challenges above defined. The older authorities seem to have understood *peremptory* and *principal* challenges to signify the same thing. *Cowell*, citing *Staundf. Pl. Cor.* 157, 158. *Blount*, citing *Lamb. Eiren.* lib. 4, c. 14. *Termes de la Ley.* The challenge *for cause* seems also to have been confounded with the challenge *for favor*. *Termes de la Ley.* *Cowell*, citing *Kitch.* 92. Sir Wm. Blackstone makes principal challenges and challenges to the favor, subdivisions of one species of challenge to the polls, viz., the challenge *propter affectum*. 3 *Bl. Com.* 363. Lord Coke, on the other hand, makes them the leading divisions both of challenges to the

array, and challenges to the polls. *Co. Litt.* 156 a, 156 b.

CHALUNGE. L. Fr. A claim. *Kelham.*

CHAMBER. [L. Lat. *camera*.] A term applied to courts, (the Star Chamber, the Exchequer Chamber,) legislative bodies, (Chamber of Peers, Chamber of Deputies,) and other public associations; (Chamber of Commerce, &c.)

In old English law. A private repository of money; a coffer. See *Camera*, *Chambre*.

CHAMBER, WIDOW'S. A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber, is called in London the *widow's chamber*. 2 *Bl. Com.* 518.

CHAMBERS. In practice. The office or private rooms of a judge, where parties are heard, and orders made in matters not requiring to be brought before the full court; and where costs are taxed, judgments signed, and similar business transacted. 3 *Chitt. Gen. Pr.* 19, *et seq.* *Bagley's Chamber Practice, per tot.*

CHAMBERS. In international law. Portions of the ocean included within lines drawn from one promontory to another, or stretches of sea between adjacent headlands, (and called in England the *king's chambers*, *cameræ regis*,) claimed by the nation on whose coasts they are situated, as places of protection to merchantmen, where all hostilities are to cease.* *Opinion of Sir Leoline Jenkins*, cited *Jacobsen's Sea Laws*, 416. 1 *Peters' Adm. Dec.* 29, note. 1 *Kent's Com.* 30, 31. See *Camera regis*.

CHAMBERLAIN. [L. Lat. *camerarius*, *cambellarius*, *cambalarius*, *chamberlanus*, *chamberlingus*; from Fr. *chambellan*. *Spelman*. *Cowell*.] Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera*,) of the prince or state; otherwise called treasurer. *Cowell*, voc. *Chamberlain*. See *Camerarius*. Sir William Cavendish was treasurer of the chamber in the 24th year of Edward III. 3 *Co.* 12.

The receiver of the rents and revenues of a city. *Cowell*. *Blount*. This is the modern meaning of the word in various cities of England and America.

The name of several high officers of state in England, as the Lord Great Chamberlain of England, Lord Chamberlain of the Household, Chamberlain of the Exchequer. See *Cowell*. *Blount*. *Holthouse*. *Wharton*.

In modern times, the court officer styled *chamberlain* has the charge of the private apartments of the sovereign or noble to whom he is attached. *Brande*.

CHAMBERLARIA. L. Lat. Chamberlainship; the office of a chamberlain. *Cowell*.

CHAMBIUM. L. Lat. In old English law. Change, or exchange. *Bract*. fol. 117, 118. Probably another form of *ambium*, (q. v.)

CHAMBRE. L. Fr. In old English law. A private repository of money; a private treasury; a coffer. *Pension de chambre*,—*rente de chambre*; a payment of money out of personal funds, as distinguished from a rent out of lands; an annuity. *Britt.* c. 68.

CHAMP DE MAL. Fr. [Lat. *Campus Martii*.] The field or assembly of May. The national assembly of the Franks, held in the month of May. 1 *Rob. Charles V.* Appendix, Note xxxviii.

CHAMP DE MARS. Fr. [L. Lat. *Campus Martii*.] The field or assembly of March. The national assembly of the Franks, held in the month of March, in the open air. 1 *Rob. Ch. V. ub. sup.*

CHAMPART. Fr. In French law. A share or division of the profits of land; a part of the crop annually due to the landlord by bargain or custom. 4 *Bl. Com.* 135. Otherwise called *agreeer*, *tasque* and *terrage*. *Guyot, Inst. Feod.* ch. 9, sect. 9.

CHAMPARTY. See *Champerty*.

CHAMPERT. L. Fr. [L. Lat. *campers*, q. v.] In old English law. A share or division of land; champerty. *Stat. Westm.* 2, c. 49. See *Champerty*.

In old Scotch law. A gift or bribe, [Scotticé, *bud*,] taken by any great man or judge from any person, for delay of just actions, or furthering of wrongous actions, whether it be lands or any goods moveable. *Skene de Verb. Sign.* citing *Stat. 2 Rob. Br.* c. dominus Rex, 22.

Skene defines *champert*, in the laws of England, to be "where the judge, by himself directly, or by another indirectly, maintains the plea, to obtain the maintenance of the one party against the other." *Id.*

CHAMPERTIA. L. Lat. In old English law. Champerty. *Reg. Orig.* 183, *in marg.*

CHAMPERTOR, *Champarter*, *Champartor*. [L. Lat. *campiparticeps*, q. v.] In criminal law. One who is guilty of the offence of champerty. A purchaser or

promoter of other persons' suits.* 4 *Bl. Com.* 135. See *Champerty*.

* * Champertors are defined by the statute *De Conspiratoribus*, (of conspirators,) 33 Edw. III. to be "those who move or cause to be moved pleas and suits, either by their own procurement, or by that of others, and sue them at their own costs, to have part of the land in dispute, or part of the gains; (*ad campi partem, vel pro parte lucri habend.*)" This definition is, in the English edition of the statutes, at the end of the statute of conspirators; but, according to Mr. Reeves, no original text appears to warrant it; and he considers it probable that it was added by some reader, to explain what followed; for the next statute is entitled the "statute of champerty." 2 *Reeves' Hist. Eng. Law*, 243. The Latin text is given by Cowell and Spelman, but neither of them takes any notice of the deficiency.

In *Fleta*, a statute is quoted, providing that no chancellor, treasurer, justice, or other of the king's council, or of the chancery, of the household, exchequer, eyre, or any bench, nor any minister, clerk of the crown or other layman, shall receive presentations of churches, or the advowson of any churchlands, tenements or fees, by exemption or gift either to farm, or to champert, (*scilicet ad campi partem*), viz. to become a sharer in it, nor shall in any way interfere therewith, while a controversy concerning it is pending before the king, or any of his ministers, nor shall any stipend be taken thereof. *Fleta*, lib. 2, c. 36, § 4.

CHAMPERTY, *Champerty*. [L. Fr. *champert*; L. Lat. *campers, cambipartia*, qq. v.] In criminal law. The maintenance of any man in his suit, upon condition to have part of (*partire*) the thing in dispute, when it is recovered, (or *pro parte rei quæ est in placito habenda*), whether it be land (*campus*), or any thing out of land, or goods, or a debt, or any other thing in plea or suit. *Cowell. Blount. Reg. Orig.* 183. *F. N. B.* 172. *Stat. Westm.* 1, c. 25. *Co. Litt.* 368 b. 2 *Inst.* 208.—The unlawful maintenance of a suit, in consideration of some bargain to have part of the thing in dispute, or some profit out of it. *Hawk. P. C.* b. 1, c. 84. *Shaw, C. J.* 1 *Pick. R.* 416. 6 *Porter's (Ala.) R.* 488. *U. S. Dig.* Champerty and Maintenance, I.—A species of maintenance, being a bargain with a plaintiff or defendant *campum partire*, to divide the land, or other matter sued for,

between them, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own expense. 4 *Bl. Com.* 135.

In the modern sense of the word, *champerty* signifies the purchasing of a suit or right of suing. *Id. ibid.* Or rather, the purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. *Tindall, C. J.* 7 *Bing.* 369. *Holthouse*. The purchase of land, pending a suit concerning it, is champerty. 4 *Kent's Com.* 449. See 2 *Story's Eq. Jur.* §§ 1048—1054, and notes.

In the United States, the English doctrine of champerty and maintenance has been much modified. In New-York, the taking of a conveyance from a party in possession of land, the subject of controversy by suit in court, is no longer forbidden. See 2 *Rev. Stat.* [691,] 576, §§ 5, 6. 21 *Wendell's R.* 98. In Michigan, the application of the doctrine to sales of land by a party out of possession, has been annulled. 20 *Howard's R.* 467. In Vermont, the *bonâ fide* purchase of a right of action is not champerty. 28 *Vermont R.* 490, 496. And see the observations of Grier, J. 20 *Howard's R.* 488. As to agreements between attorney and client, for a part of the matter in litigation as a compensation for services, see 2 *Denio's R.* 607. 1 *Hoffman's Ch. R.* 421. 4 *Kent's Com.* 449, note.

The distinction between *maintenance* and *champerty* seems to be this: where there is no agreement to divide the thing in suit, the party intermeddling is guilty of maintenance only, but where he stipulates to receive part of the thing in suit, he is guilty of champerty. 4 *Chitty's Bl. Com.* 135, note. Hence the rule of Lord Coke, that every champerty is maintenance, but every maintenance is not champerty. 2 *Inst.* 208. See *Maintenance*. See the English authorities on this subject, cited in 4 *Steph. Com.* 264, note (l). For the American law of champerty, see 4 *Kent's Com.* 449, and note. *United States Digest*, Champerty and Maintenance. 2 *N. Y. Rev. St.* [288, §§ 71—74,] 216, §§ 72—75. *Id.* [691,] 576, §§ 5—7. *Lewis' U. S. Crim. Law*, 493—498.

CHAMPION. [L. Lat. *campio*.] He who, in the trial by battle or combat, (*campus* or *duellum*), fought either for the tenant or demandant. 3 *Bl. Com.* 339. *Certator pro alio datus in duello. Hotom. de Verb. Feud.*

One who fought in his own cause. *Cowell. Blount. See Campio.*

CHANCE. [Lat. *casus*; L. Lat. *infortunium*.] In criminal law. Accident; that which happens or falls out unexpectedly or unintentionally; the opposite of contrivance, intention or design. Applied to injurious acts, such as the killing of a person, which happen as the consequences of other acts by other persons, where such consequences are not intended or foreseen. "If any accidental mischief happens to follow from the performance of a lawful act, the party stands excused from all guilt." 4 *Bl. Com.* 27. See *Id.* 182. As to the accidental consequences of unlawful acts, see *Id.* 27. *Foster's Cr. Law*, 259. 2 *New-York Rev. St.* [661,] 551, § 13.

CHANCELLARY, Chancellarie. L. Fr. Chancery. *Rot. Parl.* 4 Hen. IV. cited 1 *Rep. in Chanc.* Appendix.

CHANCELLOR. [L. Lat. *cancellarius*; L. Fr. *chancelier, chauncellour*.] The presiding judge in the court of chancery. See *Chancery*.

In England, the Lord High Chancellor is the highest judicial officer of the realm, and, in point of precedence, ranks above every temporal lord. 3 *Bl. Com.* 46. 1 *Wooddes. Lect.* 95. 3 *Steph. Com.* 407. He is, however, much more than a judicial officer, being also keeper of the great seal, a privy counsellor, and prolocutor of the House of Lords. 3 *Bl. Com.* 47.

In American law, the judges of such state courts as are exclusively courts of equity, are called chancellors, but the office is strictly a judicial one. See *Chancery*.

* * The title and office of *chancellor* are generally supposed to be derived from the *cancellarius* (q. v.) of the lower Roman empire, from which source they passed to the various modern kingdoms of Europe, including the Anglo-Saxons, among whom the office is well ascertained to have existed. Sir Henry Spelman has given a list of all the chancellors of England, from the earliest Saxon period. *Gloss. voc. Cancellarius*. According to Selden, the oldest mention in good authority, of the name of chancellor of England, is in the time of Edward the elder, about the year 920, who constituted Turketill (*Turketulus*) his chancellor with very transcendent powers. *Selden's Office of Chancellor*, (Works, vol. iii. 1466,) cited 1 *Wooddes. Lect.* 96, 97. 1 *Spence's Chancery*, 78, 79. The word *chancellor* itself seems to have been formed immediately

from the L. Fr. *chancelier*, or *chauncellier*. The Saxon word was *boceras*; but the Lat. *cancellarius* was always used in charters and records, as well as by the old chroniclers. *Spelman, voc. Cancellarius*. For the original derivation of the term, see *Cancellarius*.

CHANCELLOR OF A DIOCESE, or OF A BISHOP. In English ecclesiastical law. An officer appointed to hold the bishop's court for him, and to assist him in matters of ecclesiastical law. 1 *Bl. Com.* 382. *Tomlins*.

CHANCELLOR OF THE DUCHY OF LANCASTER. [L. Lat. *cancellarius ducatus et comitatus palatini domini regis Lanc.*] In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. This is a special jurisdiction, concerning all manner of equity relating to lands holden of the king, in right of the Duchy of Lancaster. *Hob.* 77. 3 *Bl. Com.* 78.

CHANCELLOR OF THE EXCHEQUER. [L. Lat. *cancellarius de scaccario, or cancellarius et subthesaurarius scaccarii domini regis*.] A high officer of the British crown, who sometimes sits in the Exchequer with the regular judges or barons of the court, where his duty is to take care of the interests of the crown. 3 *Bl. Com.* 44. *Wharton's Lex.* In this capacity, he has precedence above the barons. *Brande*. He seems to have originally actually exercised the functions of a chancellor, or, in the phrase of the old books, "to have been created for the *qualifying of extremities* in the exchequer." *Cowell*. And see *Fleta*, lib. 2, c. 27. His legal functions, however, have long been merely formal, and by the statute 5 Vict. c. 5, abolishing the equity side of the Court of Exchequer, seem now to be entirely extinguished. The most important duties of this officer concern the management of the royal revenue, he being the principal finance minister of the government. 3 *Bl. Com. ub. sup.* This office is commonly united to that of first lord of the treasury, when the premier happens to be below the peerage. *Brande. See Exchequer*.

CHANCELLOR, Chancellare. In Scotch practice. The foreman of an assise or jury. 1 *Pitcairn's Crim. Trials*, part 1, p. 78.

CHANCE MEDLEY. [from Fr. *chance*, accident, and *meler*, to mingle. A casual meeting or affray.] In criminal law. The accidental killing a man in self-defence, in a sudden rencounter; a species of excusa-

ble homicide. 4 *Bl. Com.* 184. 3 *Inst.* 55, 57. *Foster's Crown Law*, 275, 276. —Manslaughter without former malice. *Finch's Law*, b. 3, ch. 19. —Manslaughter on a sudden quarrel. 4 *Steph. Com.* 103, note (t).

Chance medley is distinguished by Blackstone from homicide *per infortunium*, or by misadventure, (4 *Bl. Com.* 182); though the terms seem to be confounded in the old books, (*Staundf. Pl. Cor.* lib. 1, c. 8. *Termes de la Ley*. *West's Symboleog.* par. 2, tit. Indictments, sec. 5, cited in *Blount*;) and by so late a writer as Whishaw. It is also sometimes confounded with *chaud-medley*, (q. v.) Sir Michael Foster, however, considers the difference between *chance medley* and *chaud medley*, in point of sense, as very small. *Fost. Cr. Law*, 276, note.

CHANCERY, or COURT OF CHANCERY. [L. Lat. *cancellaria*, *curia cancellaria*; L. Fr. *chauncerie*, *chauncelrie*, *court de chauncellerie*.] In English and American law. A court of equity; the name given to a court in which equity is either exclusively or chiefly administered; the court of the chancellor. Sometimes used as a synonyme of equity, or proceedings in equity.* See *Equity*.

In English law. A court of common law held by the chancellor, called the ordinary or legal court, where is kept the *officina justitiæ*; out of which issue all original writs, commissions, &c., under the great seal, of which the Lord Chancellor is keeper.* 3 *Bl. Com.* 47, 48.

* * In England the Court of Chancery is the highest court of the kingdom, next to the parliament, and is both a court of equity and of common law. Its jurisdiction in the latter character, however, though of superior antiquity, and called the *ordinary* jurisdiction of the court, (and in respect of which only it is called a court of record) has been completely overshadowed by its equitable or *extraordinary* jurisdiction, which embraces the principal and most important business of the court. 3 *Bl. Com.* 46—49. 3 *Steph. Com.* 407—410.

There are in fact five superior courts of chancery in England, viz. the *High Court of Chancery*, presided over by the Lord High Chancellor of Great Britain, to whom an appeal lies from the others; the *Court of the Master of the Rolls*, who is assistant to the Lord Chancellor, when present, and his deputy when absent; and the *Court of*

the *Vice-Chancellor of England*, created by stat. 53 Geo. III. c. 24; and two additional vice-chancellors have been since appointed, with powers precisely similar to those of the Vice-Chancellor of England. *Wharton's Lex*.

In American law, the terms *chancery*, and *court of chancery* have been adopted to some extent, though the corresponding terms *equity* and *court of equity* are more generally used. In some of the states (as Delaware, Virginia, South Carolina, Alabama and Mississippi) equity powers are exercised by distinct and independent tribunals, and to these the appellation of *courts of chancery* is usually given. In most of the states, however, the jurisdiction of law and equity is vested in the same tribunal, though exercised by a different course of procedure. See 4 *Kent's Com.* 163, 164, note. As to the origin and history of the Court of Chancery, see 1 *Storcy's Eq. Jur.* ch. 2. 1 *Spence's Chancery*, part 2, b. 1.

CHANGER. An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others. It is mentioned in the statute 2 Hen. VI. c. 12, where it is written, (after the old way,) *chaungeour*. *Cowell. Blount*.

CHANTER, *Chaunter*. L. Fr. To declare aloud; (literally, to sing or chant;) to pronounce or find, as the verdict of a jury. *Al nisi prius*, *l'enquest chaunta pur le pl'*; at nisi prius, the jury found for the plaintiff. *Yearb. M.* 7 Hen. VI. 17. See T. 7 Hen. VI. 91. *Si les recognitors de le assise chaunta pur le plaintife*; if the recognitors of the assise find for the plaintiff. *Litt.* sect. 442. Translated in some of the editions of Coke Littleton, "*chante* for the plaintiff."

CHANTRY, *Chauntry*. [L. Lat. *cantaria*.] In old English ecclesiastical law. A church or chapel endowed with lands or other yearly revenues, for the maintenance of one or more priests to sing [or chant, *cantare*,] mass daily for the souls of the donors, and such others as they appointed. *Termes de la Ley*. *Cowell. Spelman*, voc. *Cantaria*. See 4 Co. 96, *Adams & Lambert's case*, where a will granting such an endowment is given.—A private religious foundation, of which there were many in England before the Reformation, established for the purpose of keeping up a perpetual succession of prayers for the

prosperity of some particular family while living, and the repose of the souls of those members of it who were deceased; but especially of the founder and other persons specifically named by him in the instrument of foundation. *P. Cyclopædia*. They were usually little chapels, or particular altars in some cathedral or parochial church. *Blount*. See *P. Cyclopædia*.

CHAPEL. [L. Lat. *capella*.] In ecclesiastical law. A minor religious edifice, in which divine service is celebrated in the same manner as in the parochial church, but generally of more modern erection, and of a subordinate and auxiliary character.* 3 *Steph. Com.* 151.

CHAPEL OF EASE. In English ecclesiastical law. A chapel founded in general at some period later than the parochial church itself, and designed for the accommodation of such of the parishioners as, in course of time, had begun to fix their residence at some distance from its site; and so termed because built *in aid* of the original church.* 3 *Steph. Com.* 151. *Watson's Ch. L.* 645, cited *ibid.* *Cowell*. Places of worship of modern foundation, especially those in towns, are called *chapels of ease*, being erected for the *ease* and convenience of the inhabitants, when they have become too numerous for the narrow limits of their parish church. *P. Cyclopædia*.

CHAPELRY. [L. Lat. *capellaria*.] The precinct and limits of a chapel. The same thing to chapel, as a parish is to a church. *Termes de la Ley. Cowell. Blount*.

CHAPITER. [L. Fr. *chapitre*; L. Lat. *capitulum*.] In old English law. A summary in writing of such matters as were to be inquired of, or presented before justices in eyre, justices of assize, or of the peace, in their sessions. *Stat. Westm.* 1, c. 27. *Termes de la Ley. Britt.* c. 3. These chapters, (otherwise called *capitula itineris*), were delivered to the justices from the king for their direction; and, upon the opening of their courts, were first read over to the grand inquests, and then delivered to them in writing. *Termes de la Ley. Cowell. Crabb's Hist. Eng. Law*, 130, 162. They were afterwards called *articles*. *Mirr. lib. 3. Cowell. Blount*. See *Capitula*.

CHAPMAN. [said to be from Germ. *copman*.] A trader who trades from place to place. *Ryder, C. J.* construing the stat. 5 *Ann.* c. 14. *Say.* 191, 192.

CHAPTER. [L. Lat. *capitulum*, q. v.] In English ecclesiastical law. An assembly of the prebendaries and canons in a cathedral, conventual or collegiate church; called in the old books *congregatio clericorum*, an assembly of clerks or congregation of clergymen. *Termes de la Ley. Cowell. Co. Litt.* 103, 300. The chapter is presided over by the *dean*, and acts as the council of the bishop, taking the place of the prior and convent, who acted in that capacity before the Reformation. 1 *Bl. Com.* 382. 3 *Co.* 75. *Bract.* fol. 12. 3 *Steph. Com.* 67. See *Dean*.

This word is also applied to the meetings of other religious communities when assembled for business, and sometimes to the *places* where such meetings are held. *Termes de la Ley. Cowell*. But these are more properly termed chapter-houses. *P. Cyclopædia*.

CHARACTER. [from Gr. *χαράσσειν*, from *χαράσσω*, to mark, cut or engrave, as on stone or metal.] Literally, a distinctive mark or impression. In the civil law, the device on a seal or signet ring, (*annulus*). *Dig.* 28. 1. 22..5.

A quality or aggregate of qualities of mind or morals, especially the latter, impressed by nature or habit on a person, and distinguishing him from others.

In the law of evidence. A moral quality, or aggregate of moral qualities, which a party to a suit or prosecution, or a witness who has given testimony in a cause, is believed, from general report, to possess. Otherwise termed *general character*, *general report* and *reputation*. See 2 *Russ. Crimes*, 784. 1 *Phill. Evid.* 469, 470. 2 *Stark. Evid.* 366. 26 *Vermont R.* 270. General character is the estimation in which a person is held in the community where he has resided. *Marcy, J.* 2 *Wendell's R.* 352, 354. Character and reputation are the same. *Duncan, J.* 3 *Serg. & Rawle*, 337. Character is a term convertible with common report. *Gibson, J. Id. ibid.* One's character is the aggregate or abstract of other men's opinions of one. *Redfield, C. J.* 26 *Vermont R.* 278, 279.

The word "general," as applied to character, is used in different senses, which it may be well to distinguish. By "general character" is ordinarily meant a combination of various moral qualities, making up a person's whole moral character. But character, to this extent, is rarely made the subject of evidence. It is the possession

of some *particular* moral quality, supposed to be capable of raising a presumption conflicting with the particular offence charged, which evidence is used to establish. So far, it may be termed particular character. *Wharton's Am. Crim. Law*, 294. But it is strictly *general* in another sense, that is, habitual, derived from a course of life, and not from particular acts of conduct. 2 *Russ. Crimes*, 784. 1 *Phill. Evid.* 469, 470. In these cases, the term "general" is applied to the person whose character is made the subject of evidence. But the more common application of the term is to the persons whose opinions of such character are referred to. The *general character* of a person is the character or reputation which he *generally* bears, that is, which he is supposed or believed to possess, not by one or two individuals, but by the *community* in which he has resided, or where he has been generally known.

CHARAXARE, *Caraxare*. L. Lat. In old records. To mark; to write. *Spelman. Charaxator*; a writer; a notary. *Id. Charaxatura*; a writing; the obliteration of a writing. *Id.*

CHARE. L. Fr. In old English law. A plough. *Stat. Westm.* 1, c. 1.

CHARETTE, *Charet*, *Charret*. L. Fr. In old English law. A cart. *Stat. Westm.* 1, c. 1, §2. *Britt.* c. 1. *Charretter*; a carter. *Kelham*.

A cart-load. 1 *And.* 60.

CHARGE. [Lat. *onus*; Span. *carga*.] A burden; an incumbrance or lien upon land; a duty or liability attached to, or obligation imposed upon a person.* 3 *Co.* 14, *Harbert's case*. 1 *Steph. Com.* 348. 3 *Id.* 637.

To **CHARGE**. [Lat. *onerare*.] To bind; to make or hold liable; to subject to, or burthen. Thus, land is said to be *charged* with a covenant of warranty, a debt, execution, (3 *Co.* 12, 14,) or trust. 4 *Kent's Com.* 540. So a person is said to be *charged* with a duty or liability. 3 *Co. ub. sup.* "If two be bound in an obligation, there the *charge* shall survive: so it appears that when land shall be *charged* by any lien, the *charge* ought to be equal, and one alone shall not bear all the burthen, and the law on this point is grounded on great equity: but in all the cases at the common law, if the party who should be *charged* had aliened the land *bona fide*, before any action brought, the land in the hands of the purchaser was not subject to any *charge* or execution." *Id.* 14.

In practice. To subject land or person to execution. 3 *Co. ub. sup.* To charge a person in execution, is to take or arrest him by virtue of a writ of execution. 1 *Tidd's Pr.* 365, 367. 4 *Term R.* 367.

CHARGE. In practice. An address to a jury impannelled in a cause, by the presiding judge, after the case has been closed on both sides, recapitulating and commenting upon the testimony adduced by the respective parties, and instructing the jury in any matter of law arising upon it.* 3 *Steph. Com.* 617. Story, J. 10 *Peters' R.* 657, 660. In English practice, this is called the *summing up*, (q. v.) 2 *Tidd's Pr.* 867. 1 *Archb. Pr.* 195.

An address to the grand jury or inquest of a county, by the presiding judge of the Court of Oyer and Terminer, or other principal criminal court, instructing them in their duty.* 4 *Bl. Com.* 303.

To *charge*. To deliver such an address.

To **CHARGE**. In equity pleading. To make a distinct and formal allegation in a bill, usually for the purpose of anticipating and meeting some allegation or defence on the part of the defendant.* If the plaintiffs are aware of any defence which may be made, and have any matter to allege which may avoid it, the general charge of confederacy is usually followed by an *allegation* that the defendants pretend or set up the matter of their defence, and by a *charge* of the matter which may be used to avoid it. This is commonly called the *charging part* of the bill. *Milford's Ch. Pl.* 43. Story's *Eq. Pl.* § 31.

CHARGE. In equity practice. A statement in writing made by a party to a suit in equity, before a master of the court, of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. It is more comprehensive than a *claim*, which implies only the amount due to the person producing it, while a *charge* may embrace the whole liabilities of the accounting party. *Hoffman's Master in Chanc.* 36.

CHARGE. In Scotch law. The command of the king's letters to perform some act; as a *charge* to enter heir. *Bell's Dict.*

A messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. *Id.*

CHARGE AND DISCHARGE. In equity practice. The mode or form of accounting before a master. Where a decree

or order of the court directs an account to be taken and examined before a master, in such case the plaintiff delivers in an account before the master, in the form of a *charge*, (q. v.) against the defendant; which being examined and gone through, the defendant or adverse party must bring in his *discharge*, (q. v.) against such charge; which being likewise examined and gone through, the master will exercise his judgment upon the evidence, and allow or disallow the charge, or any part of it, as he thinks proper, and so, *e contra*, as to the discharge, after which the report is made. *Cunningham. Whishaw. 2 Daniell's Chanc. Pr. 1420—1422. Hoffman's Mast. in Chanc. 36—39.*

CHARGE D'AFFAIRES. Fr. In international law. A person *entrusted with the affairs* of his nation. The title of a diplomatic representative, or minister of the fourth grade. 1 *Kent's Com. 39, note. Wheaton's Elem. Intern. Law, 277.*

CHARGEANT, Chargaunt. L. Fr. [from *charger*, q. v.] Weighty; heavy; forcible; penal; expensive. *Kelham.*

CHARGER. L. Fr. To load. *Ont charge certain vessels one leur bienz*; have loaded certain vessels with their goods. *Yearb. T. 11 Hen. VI. 3. Chargeez*; loaded; laden. *Kelham.*

CHARGES. In practice. Expenses incurred in a suit at law or in equity, or other judicial proceeding; including such as do not come under the technical denomination of *costs*. The expression "*costs and charges*" is of frequent occurrence in practice. See 2 *Wils. 267, 268.*

CHARITABLE. This word, in the expressions "*charitable uses*," "*charitable trusts*," is understood in a very large sense, comprising not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and for any other useful and public purpose, as well as donations for pious or religious objects. 3 *Steph. Com. 229.* See 1 *Id. 428*, and note (b). 2 *Chitt. Bl. Com. 273, 274*, and notes. 2 *Kent's Com. 285—288*, and notes. 2 *Story's Eq. Jur. §§ 1160—1164. Duke on Charit. Us. 105, 113*, cited *ibid.* *U. S. Digest, Charities and Charitable Uses.*

CHARITY. A charitable gift or bequest; a gift or bequest to charitable uses or purposes. See *Charitable*. Described by Lord Camden as a "gift to a general public use, which extends to the rich as

well as to the poor." *Ambl. 651.* See 2 *Story's Eq. Jur. ch. 32. U. S. Digest, Charities and Charitable Uses.*

CHARRE, Char. [L. Lat. *charrus*.] An old weight of lead in England. *Cowell.* See *Charrus*.

CHARRETE. L. Fr. A cart. *Yearb. (Additions) H. 2 Edw. III. 3.*

CHARRUS. L. Lat. In old English law. A char, or charre. A weight of lead consisting of thirty pigs (*fofmelli*), each pig containing six stone wanting two pounds, and each stone twelve pounds. *Fleta, lib. 2, c. 12, §§ 1, 2.* It seems to have been sometimes written *careclata*. See *Cowell, voc. Fofmel.*

CHARNEL. L. Fr. [L. Lat. *carnalis*.] Of the same flesh, (or blood). *Charnels amys*; relations by blood. *Britt. c. 52.*

CHARTA. Lat. [Gr. *χαρτης*.] In the civil law. Paper; the material on which instruments, books, &c. were written. *Dig. 32. 52. Nov. 44, c. 2.* Distinguished from *papyrus*. *Dig. 32. 52. 6. Charta pura*; blank paper. *Id. 32. 52. 4.* What passed by a bequest of *charta*, and *charta pura*, see *Id. 32. 52. 4, 6. Id. 32. 76.*

An instrument or writing. See *Nov. 44, c. 2*, instructing the *tabelliones* (notaries) in the preparation of their instruments.

CHARTA, Carta. L. Lat. [Lat. *symbolum, tabula*; L. Fr. *chartre*; Fr. *charte*; Span. *carta*.] In old English law. A charter, or deed; a writing under seal, by which conveyances of lands, contracts, covenants and the like were evidenced and ratified; (*scriptum obsignatum, quo prædiorum cessiones, contractus, conventiones et hujusmodi ratæ fiunt*.) *Spelman. Bract. fol. 33 b—38. Id. fol. 40.* So called from the material (*charta*, paper,) upon which it was written. 2 *Bl. Com. 295.* See *Charter, Deed. Charta de feoffamento*; a charter of feoffment. *Bract. fol. 33 b. Charta de quiete clamantia*; a charter of quit claim. *Id. ibid. Charta de confirmatione*; a charter of confirmation. *Id. ibid. Fleta, lib. 3, c. 14, § 1.* See *Carta. Charta [carta] de non ente non valet.* A deed of a thing not in existence is void. *Co. Litt. 36 a.*

Any signal or token by which an estate was held; as a horn, &c. *Willelmus, filius Nigelli, tenuit custodiam forestæ de Bernwode de domino rege, per unum cornu, quod est charta prædictæ forestæ*; William, son of Nigel, held the ward of the forest of Bernwode of the king, by one horn, which

is the *charter* of the said forest. *Kennett's Par. Ant.* 73. *Cowell.*

A royal grant of privileges or liberties, (*charta regia*), either to an individual, as a charter of pardon, (*carta perdonationis*), to a public body, (see *Charter*), or to a whole nation, as *Magna Charta*, the Great Charter; *Charta de Foresta*, the Charter of the Forest. See *Magna Charta*.

* * The term *charta* was introduced into England by the Normans, in lieu of *chirographum*, which was the Latin word used among the Saxons, answering to the vernacular *boc*. *Normanni chirographa chartas vocabant. Ingulph. apud Spelman.* 1 *Reeves' Hist. Eng. Law*, 88. Lord Coke distinguishes *charta*, (a charter), from *factum*, (a deed); the former touching inheritance, not so the latter, unless it have some other additions. *Co. Litt.* 9 b. Bracton, however, applies both words to royal grants. *De chartis vero regis et factis regum, &c. Bract. fol.* 34. The *ch* in this word seems to have always been pronounced hard, (after the Gr. *χάρης*), which led to the practice of writing the word *carta*, in which form it occurs in the Register, and in some of the old writers. *Reg. Orig.* 157—160. *Co. Litt.* 36 a. *Magna Charta* was originally entitled "*Magna Carta*."

CHARTA COMMUNIS. L. Lat. In old English law. A common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. *Bract. fol.* 33 b, 34. Hence these deeds were executed in two parts, each party keeping one, and were otherwise termed *chartæ cyrographatæ*, chirographed charters. *Id. ibid.* See *Fleta*, lib. 3, c. 14, §§ 2, 3.

CHARTA CYROGRAPHATA, (or CHYROGRAPHATA.) L. Lat. In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, (*scinditur per medium*), where the word *cyrographum*, or *chirographum* was written in large letters. *Bract. fol.* 34. *Fleta*, lib. 3, c. 14, § 3. See *Chirograph*.

CHARTA (or CARTA) DE FORESTA. L. Lat. In old English law. The charter of the forest. A charter or ordinance containing the laws of forest, granted in the ninth year of the reign of Henry III. In all editions of the statutes, it immediately follows *Magna Charta*, which is said to

have originally included it. 1 *Reeves' Hist. Eng. Law*, 254, *et seq.* *Crabb's Hist. Eng. Law*, 136, c. 11. *Barringt. Obs. Stat.* 35. Hence it is sometimes called *Charta Parva*, the little or lesser charter. *Hardr.* 437. Sir Matthew Hale describes it as entered, *Mag. Rot. Stat. membr.* 19, (Great Statute Rolls, sheet 19;) and *Rot. Cartar.* (Charter Rolls), 28 Edw. I. membr. 26. *Hale's Hist. Com. Law*, ch. 1. An edition of this Charter was published by Sir W. Blackstone, from an original in the archives of the cathedral of Durham, with various readings from two charters of Inspecimus, 28 Edw. I. and two enrollments in the Tower of London. See *Magna Charta*.

CHARTA PARTITA. L. Lat. [literally, a deed divided.] A charter party. *Towns. Pl.* 112. 3 *Ken's Com.* 201. See *Charter party*.

CHARTE-PARTIE. Fr. In French marine law. A charter party. *Ord. Mar.* liv. 3, tit. 1. *Emerig. Tr. des Ass.* ch. 11, sec. 3. Called also *affretement*, and *nolisement*. *Ord. Mar. ub. sup.*

CHARTEL. L. Fr. In old English law. A letter of defiance or challenge to single combat, in use during the period when trial by *battel* was practised. *Cowell. Blount.*

CHARTER. [L. Lat. *charta*, *carta*; L. Fr. *chartre*; Fr. *charte*; Sp. *carta*; qq. v.] In old English law. A written instrument under seal, containing the evidence of things done between man and man.* *Cowell. Holthouse.* Otherwise called a private charter. *Bract. fol.* 33 b. A conveyance of lands; a contract, covenant or other sealed instrument, (*scriptum obsignatum*). *Spelman, voc. Charta.* This term was much more comprehensive than the modern *deed*, which has taken its place; and was used as an English word, (framed probably from the Fr. *chartre*), as early as the time of Bracton, who gives the following as an English phrase, (*secundum quod Anglice dicitur*)—*he had both writ and charter*; signifying that a party had both a *charter*, or deed of land, and a *writ*, that is, a letter of attorney to deliver possession. *Bract. fol.* 40. See *Fleta*, lib. 3, c. 15, § 5. 1 *Leon.* 34. The term *charter* was not obsolete when Blackstone wrote, and was particularly appropriate to a conveyance by feoffment. 2 *Bl. Com.* 295. *Co. Litt.* 36 a. And as to the distinction between charters and deeds, see *Maddox*

Formul. Angl. Diss. p. 2. *Mad. Hist. Exch.* pref. ep. p. 8.

An instrument in writing, containing a grant from the crown to any person or persons, or to any body politic, of any rights, liberties, franchises or privileges.* Otherwise called a royal charter (*charta regia*). *Bract.* fol. 33 b. Some of the old acts of parliament were in the form of charters. 8 *Co. The Prince's case*. These royal charters are preserved in the *Charter Rolls*, the series of which commences in the year 1199, and terminates in 1516, when that species of royal diploma ceased; and all the written acts of the sovereign in the nature of grants were thenceforward made in the form of *letters patent*, and recorded upon the *Patent Rolls*. *Hubback's Evid. of Succession*, 616. See *Charter Rolls*.

CHARTER. In old Scotch law. A disposition made by a superior to his vassal, for some thing to be performed or paid by him. 1 *Forbes' Inst.* part 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. *Ersk. Inst.* b. 2, tit. 3, § 10. See *Bell's Dict.*

CHARTER. In modern law. A grant in writing of certain privileges and franchises, (usually to a corporation) by the supreme power of a state; an act of incorporation. In this sense, the original meaning of the term *charter*, as applied to grants by the sovereign to individuals or corporate bodies, is, with some modification, retained. See *Charter, supra*.

To CHARTER. In mercantile law. To engage a vessel for a voyage. A "chartered" is distinguished from a "seeking" ship. Lord Ellenborough, 7 *East*, 24.

CHARTER OF THE FOREST. See *Charta de Foresta*.

CHARTERER. In mercantile law. One who charters (i. e. hires or engages) a vessel for a voyage; a freighter. 2 *Steph. Com.* 184. 3 *Kent's Com.* 137.

CHARTER LAND. [*Sax. boc land.*] In old English law. Land held by charter, (deed) or written evidence; deed land, book-land. Freehold lands were so called, as distinguished from copyhold. *Termes de la Ley. Co. Litt.* 6 a. 2 *Bl. Com.* 90. See *Boerland*.

CHARTER OF PARDON. [*L. Lat. charta or carta perdonationis.*] In English criminal law. A charter or instrument under the great seal, by which a man is forgiven a felony, or other offence committed

against the king's crown and dignity. *Bro. Abr.* Charter of Pardon. *Dyer*, 34. *Cowell.* 4 *Bl. Com.* 400, 402. See the old form, *Reg. Orig.* 288, 308; and see 2 *Reeves' Hist. Eng. Law*, 437.

CHARTER PARTY. [*L. Lat. charta partita*; *Fr. charte-partie.*] In mercantile law. A contract by which an entire ship, or some principal part thereof, is let to a merchant, for the conveyance of goods on a determined voyage to one or more places. *Abbott on Ship.* [241.] 315.—A contract of affreightment in writing, by which the owner of a ship lets the whole or a part of her to a merchant, for the conveyance of goods on a particular voyage, in consideration of the payment of freight. 3 *Kent's Com.* 201. Expressively called "a mercantile lease of a ship." *Id.* 302. See 2 *Steph. Com.* 184. See *Affreightment*.

A charter party contains stipulations by both parties, as to the vessel and voyage, the cargo, and amount of freight to be paid, &c. It is signed by both, and is executed in parts, one being kept by each party. Its name (more clearly expressed by the *L. Lat. charta partita*, a deed divided, and probably immediately derived from the *Fr. chartre parti*,) has preserved a relic of the ancient practice of *dividing* indentures after execution, into two parts, of which each party kept one. 3 *Kent's Com.* 201. *Abbott on Ship.* [241, 242.] 315, 316. *Ord. Mar.* liv. 1, tit. 2, art. 2, note. See *Chirograph, Indenture*. Hence it is called in the old books, a pair of indentures. *Blount*.

In a late case in the Supreme Court of the United States, a charter party was said to be "an informal instrument as often as otherwise, having inaccurate clauses; and on this account they must have a liberal construction, such as mercantile contracts usually receive, in furtherance of the real intention of the parties and usage of trade." *Wayne, J.* 17 *Howard's R.* 59.

CHARTER ROLLS. [*L. Lat. rotuli cartarum.*] Rolls preserved amongst the ancient English records, containing the royal charters from the year 1199 to 1516. They comprise grants of privileges to cities, towns, bodies corporate, and private trading companies; grants of markets, fairs, and free warrens, of creations of nobility, of privileges to religious houses, &c. *Hubback's Evid. of Succession*, 616, and notes, *ibid.*

CHARTIS, (or CARTIS) REDDEN-DIS. See *De cartis reddendis*.

CHARTOPHYLAX. Græco-Lat. [from Gr. *χαρμς*, paper or writing, and *φύλαξ*, a keeper.] In old European law. A keeper of records or public instruments; a chartularary; a registrar. *Spelman*.

CHARTOPRATES, (pl. *Chartoprati*.) Græco-Lat. [from Gr. *χαρμς*, paper, and *πράτης*, a seller.] In the Roman law. A seller of paper; a dealer in paper. *Cod.* li. 17, *De collegiatis et chartopratis*.

CHARTRE. L. Fr. In old English law. A charter. *Quant à garnement del escrit, que home appelle chartre*; as to that garment (vestment or clothing) of writing which men call a charter. *Britt.* c. 39.

CHARUE. L. Fr. In old English law. A plough. *Bestes des charues*; beasts of the plough. *Artic. sup. Chart.* c. 12. *Britt.* c. 21.

CHASCUN. L. Fr. Every. *Assiz. de Jerus.* c. ix.

CHASE, Chace. [L. Lat. *chasea*, *chacea*.] In English law. A large extent of woody ground, (Lat. *saltus*.) less than a forest, and larger than a park, lying open and privileged for wild beasts, and wild fowl. *Termes de la Ley. Co. Litt.* 233 a. *Spelman*, voc. *Chacea*. *Manwood*, 52. 2 *Bl. Com.* 98, 414, 416.—A franchise granted by the crown to a subject, empowering the latter to keep for his diversion, within a certain precinct so called, the wild animals of chase, (which in a legal sense are the same with those to which the right of forest extends,) but not authorizing the establishment of forest law within such precinct. 2 *Steph. Com.* 21. 1 *Crabb's Real Prop.* 91, § 97; 487, § 639. This was properly a *free chase*, (q. v.) There was also the privilege called a *common chase*, (q. v.) See *Forest, Park*.

In one sense, *chase* is a generic term, embracing both a forest and a park. Thus, a forest is called a royal chase, a park an enclosed chase. 2 *Bl. Com.* 38. Every forest, says Lord Coke, is a chase, but every chase is not a forest. *Co. Litt.* 233 a. It differs from a forest in being of smaller extent, and not endowed with so many liberties, nor subject to the forest laws; and from a park, in being of larger size, and not enclosed. *Termes de la Ley.* 2 *Bl. Com.* 38. *Spelman*, voc. *Chacea*.

CHASEA. L. Lat. In old English law. A chase. *Spelman*, voc. *Chacea*. See *Chaca*, *Chacea*.

CHASER. L. Fr. To chase or hunt;

to drive. *Chase et rechase les bestes. Yearb.* M. 11 Hen. VI. 4.

To drive; to compel. *Chase de pleder*; driven to plead. *Dyer*, 6 b. (Fr. ed.) *Chase à répondre. Id.* 33 b. *Chase à conuistre. Yearb.* H. 5 Edw. III. 12.

CHASIARE. L. Lat. In old English law. To chase. *Non chasiavit*; he did not chase. *T. Jon.* 21.

CHASTELL. L. Fr. In old English law. A castle. *Stat. Westm.* 1, c. 17.

CHATE. L. Fr. Bought. *Kelham.* See *Achate*, *Achater*.

CHATEAUX. L. Fr. [pl. of *chatelle*, q. v.] Chattels. *Litt. sect.* 328.

CHATELLE, Chatell, Chatel. L. Fr. [pl. *chateux*, *cateux*, *chateaux*.] In old English law. A chattel. *Reg. Orig.* 93 b, *nota. Chatelle moeble*; a moveable or personal chattel. *Id. ibid.* Britton writes the word *chatell*, and *chatel*. *Britt.* cc. 27, 101.

CHATEUX, Chateux, Cateux. L. Fr. [pl. of *chatelle*.] In old English law. Chattels. *Britt.* cc. 1, 20, 26, 27, 28, 101. *Litt. sect.* 321. *Reg. Orig.* 93 b, *nota. Chateux moebles*; moveable or personal chattels. *Id. ibid.* *Chateux*, and *chateaux* are used by Britton, Littleton and the Register. *Par lour avers et par lour chateux*; by their beasts and by their chattels. *Britt.* c. 20. *Biens et chateux*; goods and chattels. *Id.* c. 28. *Chateux* is the form in *Fet Assaver*, §§ 59, 61. *Cateux* is used in the Norman laws. *LL. Will. Nothi* 4, *apud Dufresne*, l. 409. *Cateux meubles et immeubles. Id. ibid.* 2 *Bl. Com.* 386, note (e).

Cattle. *Keito.* 139 b.

CHATTEL [L. Fr. *chatelle*, *chatel*; L. Lat. *capitale*, *catallum*.] Any article or subject of property, moveable or immovable, not amounting to a freehold.* 1 *Steph. Com.* 262. *Chattel* is a very comprehensive term in our law, and includes every species of property, which is not real estate or a freehold. 2 *Kent's Com.* 342. It is more frequently used (like *bona*, goods,) in the plural number. See *Chattels, Cattalla*.

CHATTELS, formerly written **CATAIS**. [L. Lat. *catalla*; L. Fr. *chateux*, *chateux*, *cateux*.] Moveable goods, and all other property or estate, not amounting to a freehold.

Chattels were formerly divided into moveable and immovable, (*moebles et niemt moebles*); a division borrowed from the *bona mobilia et immobilia* and *res mobiles*

et immobiles of the civil law. *Reg. Orig.* 93 b, nota. *LL. Will. Nothi, apud Dufresne*, cited 2 *Bl. Com.* 386, note (e). *Cowell*, voc. *Catalls*. *Bract.* fol. 102. The present division of chattels into real and personal was introduced in the reign of Edward III. 3 *Reeves' Hist. Eng. Law*, 15. See *Chattels Real, Chattels Personal*.

The term *chattels* is a more comprehensive one than *goods*, as it includes animate as well as inanimate property. 2 *Chitt. Bl. Com.* 383, note. In a devise, however, they seem to be of the same import. *Shep. Touch.* 447. 2 *Fonbl. Equity*, 335. In practice, they are almost always united in the expression *goods and chattels*, which is of very ancient date. 2 *Steph. Com.* 65. See *Bona et catalla, Goods and Chattels, Effects, Personal estate, Moveables*.

* * As to the etymology of this word, the singular *chattel* seems to be immediately formed from the Fr. *chatelle*, or *chatel*, (q. v.); the plural *chattels*, (or, as it was formerly written, *catalls*,) is supposed to be derived from the L. Lat. *catalla*, the *ch* being pronounced hard, as in the word *charta*, which is evident from the form of the old Norman plural, *cateux*, (q. v.) *Catalls* is the form used in the *Termes de la Ley*, and *Cowell*. As to any further derivation, *catalla* or *catalla* is clearly shown by Spelman to be merely a contracted form of writing *capitalia*, which, with the singular *capitale*, or *capitale*, occurs frequently in the Saxon and early English laws. See *Capitale*. The Fr. singular *chattel* may have been formed from the latter word. The primary meaning of *capitalia* was animals, beasts of husbandry, (otherwise called *averia*, q. v.) or *cattle*; in which last word it is still identically retained. This will appear from the extracts given under *capitale*, (q. v.)

Capitalia is derived by Spelman from *capita*, heads; a term still popularly applied to beasts, as "so many heads of cattle." When the word took the form *catalla*, it continued to retain this primary meaning, but gradually acquired the secondary sense of *moveables* of any kind, inanimate as well as animate, and finally became used to signify interests in lands. 1 *Steph. Com.* 262. *Dufresne* II. 409. *Bract.* fol. 159 b. 2 *Reeves' Hist. Eng. Law*, 52.

CHATTELS REAL. Such chattels as concern, are annexed to, or savor of the *realty*; as terms for years of land, and mortgages; and, in English law, next pre-

sentations to a church, estates by statute merchant, statute staple, *elegit*, &c. 2 *Bl. Com.* 386. *Co. Litt.* 118 b. 1 *Steph. Com.* 262, 263. 2 *Kent's Com.* 342. 1 *Crabb's Real Prop.* 5, et seq. They are so called, as being interests issuing out of, or annexed to real estates, of which they have one quality, viz. *immobility*, which denominates them real, but want the other, viz. a sufficient legal indeterminate *duration*; and this want it is that constitutes them *chattels*. 2 *Bl. Com.* 386. They are otherwise denominated estates less than freehold. 1 *Steph. Com.* 262.

Mr. Stephen observes of chattels real, that they "are not properly the subjects of property, but rather modifications of property, or species of estates in a certain kind of subjects, viz. in things real. When considered, indeed, in reference to the distinction between real and personal estate, they are held to fall under the latter denomination, their incidents being in general the same with those of property in moveables; but as regards the distinction between *things* real, and *things* personal, they appertain to the division of things real." 2 *Steph. Com.* 65.

CHATTELS PERSONAL, otherwise called **THINGS PERSONAL**, comprise all sorts of things moveable, as goods, plate, money, jewels, implements of war, garments, animals and vegetable productions; as the fruit or other parts of a plant, when severed from the body of it, or the whole plant itself, when severed from the ground. 2 *Steph. Com.* 66, 67. 2 *Bl. Com.* 387. Besides things moveable, they include also certain incorporeal rights or interests, growing out of, or incident to them, such as patent rights and copyrights, to which Mr. Stephen has given the name of *incorporeal chattels*. 2 *Steph. Com.* 72.

There are, however, many chattels, which, though they be even of a moveable nature, yet being necessarily attached to the freehold, and contributing to its value and enjoyment, go along with it, in the same path of descent or alienation. This is the case with the *deeds* and other papers which constitute the muniments of title to the inheritance, and so with heir looms. 2 *Kent's Com.* 343. A box of charters or deeds was always classed with chattels real. *Crompt. Just.* 33 b. *Termes de la Ley*. *Cowell*.

CHATTEL INTEREST. An interest in corporeal hereditaments, not amounting to a freehold, as distinguished from a free-

hold interest; such as an estate for years in land. 1 *Steph. Com.* 262. 2 *Kent's Com.* 342. See *Burton's Real Prop.* ch. 5. A subject of ownership, though in its nature real, may be owned in such a way as to constitute a chattel interest, or personal estate. 1 *Hilliard's Real Prop.* 51.

CHATTEL MORTGAGE. A mortgage of goods, or personal property. See 2 *Kent's Com.* 516—532, and notes.

CHAUDMEDLEY. [L. Fr. *chaud melle*, from *chaud*, hot, and *mesler*, *meler*, to mingle; L. Lat. *calida melleia*.] In criminal law. The killing of a person in an affray, in the heat of blood, and while under the influence of passion; and thus distinguished from *chance medley*, (with which, according to Blackstone, it is sometimes confounded,) which is killing in a casual affray in self defence. 4 *Bl. Com.* 184. *Ersk. Inst.* b. 4, tit. 4, § 40. Called, in old Scotch law, *chaud mella*, and *chaud melle*. *Bell's Dict. Skene de Verb. Signif.*

CHAUMPERT. L. Fr. A kind of tenure mentioned in a patent of 35 Edw. III. *Cowell. Blount.*

CHAUNCERIE, Chancelrie. L. Fr. Chancery. *Britt. c.* 21. *Fet Assaver*, § 25. *Chauncerie. Britt. c.* 26.

CHAUNCELLOUR. L. Fr. Chancellor. *Dyer*, 57 b.

CHAUX. L. Fr. Those. *Kelham.*

CHAYE. L. Fr. Fallen. *Kelham.*

CHEAT or CHEATING. In criminal law. The offence of defrauding or endeavoring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty. *Hawk. P. C.* b. 1, c. 71.—The offence of fraudulently obtaining the property of another by any deceitful and illegal practice or token, (short of felony,) which affects or may affect the public. *Steph. Crim. Law*, 93. See 2 *Russell on Crimes*, 275—317, b. 4, c. 31. *Wharton's Am. Crim. Law*, 444—463. *Lewis' U. S. Crim. Law*, 150—199. *United States Digest*, Cheat.

The words "cheat and defraud" do not import any known common law offence. If punishable at all as a crime, it is only when the cheat is effected by false tokens, false pretences, or the like. *Dewey, J.* 1 *Cushing's R.* 227. To constitute the crime under the New-York statute, two things are essential: a false representation as to an existing fact, and a reliance on that representation as true. 1 *Parker's Crim. R.* 224.

CHEAUNCE. L. Fr. An accident; chance. *Kelham.*

CHECER, Cheser. L. Fr. To fall. *Checer in debat*; to come in question or debate. *Kelham.* See *Cheir*.

CHECK, Cheque. A written order or request addressed to a bank, or to persons carrying on the business of bankers, by a party having money in their hands, requesting them to pay, on presentment, to a person therein named, or to him or bearer, or order, a named sum of money.* *Chitty on Bills*, 511, (Perkin's ed. 1854). *Story on Prom. Notes*, § 487.

A check nearly resembles a bill of exchange, yet it differs from it in several particulars, the principal of which are the following: (1) a check is drawn upon an existing fund, and is an absolute transfer or appropriation to the holder, of so much money in the hands of the drawee; (2) it requires no acceptance, and when presented the presentment is for payment; (3) it is always payable on presentation and demand, and is not entitled to days of grace; and (4) the drawer is always the principal. See 3 *Kent's Com.* 75, 104, note. *Story on Prom. Notes*, § 489. *Story, J.* 2 *Story's R.* 512. 21 *Wendell's R.* 372. 2 *Hill's (N. Y.) R.* 425. And see 5 *Ohio St. R.* 13, 17, where the distinctions are laid down in detail. As to the necessity of diligence in presenting a check for payment, see *Id. ibid.* 2 *Hill's R.* 425. A draft for money in the usual form of a check, but payable on a future specified day, is a bill of exchange, and entitled to days of grace. 5 *Ohio St. R.* 13. See 2 *Selden's R.* 412.

CHECKER. The old Scotch form of Exchequer. *Skene de Verb. Signif. vocc. Ballivus, Scaccarium.*

CHEF, Chefe. L. Fr. A, or the head. *Chefe del an*; the head or beginning of the year. Translated by *Kelham*, the end of the year. See *Caput anni*.

Chief. See *Chief*.

CHEFE. L. Fr. In Anglo-Norman law. Were or weregild; the price of the head or person, (*capitis pretium*). *LL. Gul. Cong.* l. 11.

CHEIR, Cheyr, Chier, Chaier, Charer, Checcher, Cheser. L. Fr. To fall; to abate; to fall out; to happen. *Kelham.*

Chet, cheyt, chiet; it falls or happens. *Chet le brefe*; the writ abates. *Britt. c.* 48, 74. *Cheyt lassise*; the assise falls or abates. *Id. c.* 51. *Chiet en le droit. Yearb. M.* 5 Edw. III. 58. *A ceo que chiet in evidence. Id.* 74.

Cherra, chirra; it will fall. *Lassise cherra*; the assise shall fall or abate. *Britt. c. 75. Chiret en la possession. Yearb. M. 5 Edw. III. 58.*

Cheie, cheye, cheu; fallen; happened. *Kelham. L. Fr. Dict.*

CHELANDRIUM. L. Lat. In old European law. A kind of ship or vessel. So termed by the lower Greeks. *Luitprand. Hist. lib. 5, c. 6. Paul. Diac. in Just. Spelman. Meursius.*

CHEMERAGE. Fr. In old French law. The privilege or prerogative of the eldest. A provincial term derived from *chemier*, (q. v.) *Guyot, Inst. Feod. ch. 18, sect. 4.*

CHEMIER. Fr. In old French law. The eldest born. A term used in Poitou and other places. *Guyot, Inst. Feod. ch. 18, sect. 4.*

CHEMIN, Chemyn. L. Fr. In old English law. A way; a journey. *Britt. c. 61, 122. "Chemins or ways." Hale's Anal. sect. xlii. See Chimtn. Cheminaunt; journeying; travelling. Britt. c. 122.*

CHEMIS. Sc. [O. Fr. *cheamez, chef mez, i. e. chef meason.*] In old Scotch law. Mansion-house; chief dwelling. 1 *Pite. Crim. Trials*, part 2, p. 7.

CHESCUN. L. Fr. Every one; every. *En chescun article et chescun point*; in every article and every point. *Artic. sup. Chart. c. 1.*

CHET. L. Fr. (It) falls or abates. *See Cheir.*

CHEVAGE, Chivage, Chiefage. L. Fr. and Eng. [L. Lat. *chevadium, chivadium*, from Fr. *chef*, a head.] In old English law. A tribute or sum of money formerly paid by villeins or bondmen, (*servi*) to their lords, in acknowledgment of their bondage. *Bract. fol. 6 b. Co. Litt. 140 a.* Bracton speaks of it as paid by those villeins who were permitted to go about the country (*vagantes per patriam*), and engage in employments, such as traders and hired workmen, (*sicut mercatores vel mercenarii*); the payment being made in token of subjection to their lord, and of his property in them; (*in signum subjectionis, et dominii de capite suo*). *Bract. ub. sup.* Fleta speaks of it as an annual payment, (*chevadium annuum*). *Fleta, lib. 1, c. 7, §§ 7, 8.*

Chevage was so called, according to Spelman, because paid to the lord as to their chief or head, (*domino tanquam capiti*). *Spelman, voc. Chevadium.* According to others, because it was paid for their several

heads, (*de capite suo*), being a kind of head or poll money. *Co. Litt. 140 a. Blount.* The Jews, while they were admitted to live in England, paid *chevadium* or poll money to the king; as appears by Pat. 8 Edw. I. par. 1, M. 15. And it was three pence for every head, paid yearly at Easter, in token of their servitude. *Stat. de Judaismo. Blount.* Chevage seems also to have been used for a sum of money yearly given to a man of power, for his countenance and protection as a chief or leader. *Termes de la Ley. Cowell.*

CHEVAGIUM, Chevadium, Chivadium. L. Lat. In old English law. Chevage, or chivage. *Bract. fol. 6 b. Fleta, lib. 1, c. 7, § 7. Spelman. See Chevage.*

CHEVANCE. L. Fr. Goods; money; riches; substance. *Kelham.*

A bargain. *A faire chevances*; to borrow, to make bargains for. *Kelham.*

CHEVANTIA, Chevancia. L. Lat. [L. Fr. *chevance*.] In old records. A loan or advance of money upon credit. *Cowell.*

CHEVERES. L. Fr. Goats. *Britt. c. 71.*

CHEVIR. L. Fr. To come to a head; to come to an agreement touching property. *Kelham. Chevir de denier*; to take up money on loan. *Id.*

CHEVISANCE. Fr. [from *chevir*, to come to the head, (*chef*), or end of a business.] In old English law. A bargaining, or perfecting of a bargain—(drawing the matter to a head). *Termes de la Ley.* A making of contracts. *Dufresne II. 569. Stat. 37 Hen. VIII. c. 9. Stat. 13 Eliz. c. 5, 7, 8, cited 2 Bl. Com. 474. Cowell.*

A bargain or contract. *Cowell. Blount.* An unlawful or usurious bargain or contract. *Stat. 12 Car. II. c. 13. Ibid.* Sometimes erroneously written *cherisance. Whishaw.*

CHEVITIÆ, Chevisets. L. Lat. In old records. Pieces of ground, or heads at the end of ploughed lands. 2 *Mon. Angl. 116. Cowell. Blount. See Caputia.*

CHI APRES. L. Fr. Hereinafter. *Kelham.*

CHIEF. [Fr. *chef*; L. Lat. *caput*.] A head or lord. In feudal law, those tenants who held immediately under the king, in right of his crown and dignity, were called his tenants *in capite*, or in chief—that is, head tenants, holding from the head (*de capite*) of the government. 2 *Bl. Com. 60. Gilb. Com. Pleas, Introd. 17.*

In practice. A principal thing, as distinguished from that which is incidental or

subordinate. To declare *in chief*, in the old books, signified to declare for the principal cause of action. 1 *Tidd's Pr.* 419.

A beginning; that which comes first in order or proceedings. Examination *in chief* is the first examination of a witness on a trial, by the counsel of the party on whose behalf he is called, as distinguished from his *cross-examination*. 3 *Carr. & P.* 113. See *In chief*.

CHIEF BARON. [L. Lat. *capitalis baro*.] The presiding judge of the English Court of Exchequer; answering to the chief justice of other courts. 3 *Bl. Com.* 44. 3 *Steph. Com.* 401. See *Baron*.

CHIEF JUSTICE. [L. Lat. *capitalis iusticiarius*.] An appellation given to the presiding or principal judge of a court. See *Justice*.

CHIEF JUSTICIAR, JUSTICIER, or JUSTICIARY. [L. Lat. *capitalis iusticiarius, iusticiarius, iusticia*.] In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 *Bl. Com.* 38. *Gilb. C. P. Introd.* 18—20. *Spelman*, voc. *Justitia*. See *Justicier, Justitiarius*.

CHIEF LORD. [L. Lat. *capitalis dominus*, q. v.] In English law. The immediate lord of the fee, to whom the obligation of the tenant is direct and personal. *Stat Quia Emptores*, (18 *Edw. I.*) c. 1. 2 *Inst.* 501. *Litt. sect.* 479, 538. *Burton's Real Prop.* 317. The Fr. *chiefe seignieur* is used to signify the lord paramount, as distinguished from the mesne lord. *Chiefe seignieur, mean et tenaunt. Reg. Orig.* 15 b, *regula*.

CHIEF PLEDGE. [L. Lat. *capitalis plegius*.] In old English law. A head-borrow, or borsholder; the head of a decennary. *Fleta*, lib. 2, c. 52, § 5. *Spelman*, voc. *Borsholder, Friborga, Yelverton*, 186.

CHIEF RENTS. [L. Lat. *reditus capitales*.] In English law. Rents of the freeholders of a manor. 2 *Bl. Com.* 42. Called also *quit rents*, (*quieti reditus*), because thereby the tenant goes *quit* and free of all other services. *Id. ibid.*

CHIER, Chire. L. Fr. *Dear. Kelham*.

CHILDREN. Legitimate offspring; children born in wedlock. 7 *Vesey*, 458. 5 *Scott*, (N. R.) 990. When the word may

be understood otherwise, see *Id. ibid. Broom's Max.* [431—432.]

In deeds, the word "*children*" signifies the immediate descendants of a person, in the ordinary sense of the word, as contradistinguished from *issue*; unless there be some accompanying expressions, evidencing that the word is used in an enlarged sense. *Lewis on Perpetuity*, 196. 1 *Vesey*, 196. *Ambl.* 555, S. C.

In wills, where greater latitude of construction is allowed, in order to effect the obvious intention of the testator, the meaning of the word has sometimes been extended, so as to include *grandchildren*, and it has been held to be synonymous with *issue*. *Lewis on Perp.* 195, 196. 2 *Crabb's Real Prop.* 38, 39, §§ 988, 989. 4 *Kent's Com.* 345, 346, note. *Id.* 419. 1 *Sumner's R.* 367. 10 *Metcalf's R.* 502. See *Issue*. But even in wills, this construction is not adopted unless a strong case of intention or necessary implication requires it, but the word "*children*" is understood in its popular signification, namely, as designating the immediate offspring. *Grier, J.* 17 *Howard's R.* 417, 421. 4 *Vesey*, 697. *Chilton, C. J.* 25 *Alabama R.* 285, 294. As to when "*children*" will be construed as a word of limitation, and when as a word of purchase, see *Id. ibid.* 6 *Co.* 17 a. 2 *Atk.* 220. 2 *Stra.* 1172. 1 *Ball & B.* 459. 4 *Comstock's R.* 263. 6 *Ohio St. R.* 465.

CHILDWIT. Sax. [from *child*, and *wite*, a fine.] In Saxon law. The right which a lord had of taking a *fine* of his bondwoman gotten with *child* without his license. *Termes de la Ley. Cowell*. Or, according to some, the fine itself. *Holt-house*.

CHILTERN HUNDREDS. In English politics. A tract of country extending through part of Buckingham and Oxfordshires, comprising the hundreds of Stoke, Desborough and Bonenham; the stewardship of which is a nominal office in the gift of the crown. As members of parliament, strictly speaking, cannot resign their seats, and as, on the other hand, the acceptance of an office under the crown has the effect of vacating a member's seat, the mode of abandoning a seat is by taking the stewardship of the Chiltern Hundreds. 2 *Steph. Com.* 403. *Holthouse. Wharton. Brande*.

CHIMIN, Chymyn, Chemyn. L. Fr. [L. Lat. *chiminus*.] In old English law. A way, or right of way; the same with the Lat. *via*, or *aditus*. *Co. Litt.* 56 a. *Spel-*

man, voc. *Chiminus*. *Termes de la Ley*. *Com. Dig.* *Chimin*. *Le haut chimin*; the highway. See *Via*, *Way*, *Aditus*.

CHIMINAGE, *Cheminage*. L. Fr. [L. Lat. *chiminagium*, from *chimin*, q. v.] In old English law. A toll due by custom for having a way through a forest. *Co. Litt.* 56 a. A toll exacted by the foresters from carriages and horses passing through forests. *Spelman*, voc. *Chiminus*. *Charta de Foresta*, c. 14. Called by the feudists *pedagium*. *Co. Litt. ub. sup.* *Blount*.

CHIMINAGIUM, *Cheminagium*. L. Lat. In old English law. *Chiminage*. *Charta de Foresta*, c. 14. See *Chiminage*.

CHIMINUS. L. Lat. [L. Fr. *chimin*.] In old English law. A way; a road or street. *Spelman*. *Quatuor chimini*, *Watling street*, *Fosse*, *Biknild street*, & *Erming street*, &c. *LL. Edw. Conf.* c. 12, *apud Spelman*. — *Chiminum*. *Reg. Orig.* 155. In *chimino regis*; on the king's highway. *Bract. fol.* 144.

CHIMNEY MONEY, or *Hearth Money*. A tax upon chimneys or hearths; an ancient tax or duty upon houses in England, now repealed. *Cowell*. See *Fuage*, *Hearth-money*.

CHIPPINGAVEL, *Cheapingavel*. (Probably Sax. *ceapingavel*; from *ceap*, ware, and *gavel*, duty.) In old English law. A toll or duty for buying and selling; an ancient tax imposed upon wares brought to a place to be sold. *Blount*. See *Bagavel*, *ibid.*

CHIR. L. Fr. A contraction of *chivalier*, knight.

CHIRGEMOT, *Chirchgemot*. [Sax. *circgemot*; from *circ*, *ciric* or *cyric*, a church, and *gemot*, an assembly.] In Saxon law. An ecclesiastical assembly or court; (*forum ecclesiasticum*). *Spelman*. *LL. Hen. I.* c. 8, cited *ibid.* A synod or meeting in a church or vestry. 4 *Inst.* 321.

CHIROGRAPH. [L. Lat. *chirographum*, q. v.] In English law. A deed or charter. See *Charter*, *Charta*.

An indenture executed in parts. 2 *Bl. Com.* 296. *Hargr. Co. Litt.* note 234, lib. 2.

A fine of lands. *Blount*. See *Chirographum*.

A word used in the execution of indentures, and in levying fines. 2 *Bl. Com.* 296. *Hargr. Co. Litt. ub. sup.* See *Chirographum*.

CHIROGRAPHER OF FINES. [L. Lat. *chirographus* or *chirographarius finium et concordiarum*.] In old English law. An officer of the court of common pleas, who

engrossed the fines acknowledged in that court after they were examined, and fully passed by other officers; and who wrote and delivered the indentures of them to the parties. 2 *Bl. Com.* 351. 2 *Inst.* 468. *Cowell*. *Blount*. See *Fine*.

CHIROGRAPHUM, *Chirographus*. L. or Græco-Lat. [from Gr. *χειρόγραφον*, from *χείρ*, a hand, and *γράφω*, to write.] In the Roman law. A hand-writing; that which was written with a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to re-pay. A form of one of these instruments is given in the Digests in these words: *Ille scripsi, me accepisse, et accepi ab illo mutuos et numeratos decem, quos ei reddam kalendis illis proximis, cum suis usuris placitis inter nos*. I, (such a one,) have written that I have received, and I have received from (such a one) ten (so much money) borrowed, which I will return to him (on such a day) next, with the interest agreed upon between us. *Dig.* 22. 1. 41. 2. See another form in *Dig.* 2. 14. 47. 1.

An evidence or voucher of debt; a security for debt. *Dig.* 26. 7. 57. pr.

A right of action for debt. *Appellatione chirographi uti nos pro ipsis actionibus*. *Dig.* 32. 59. And see *Id.* 34. 3. 31. 3. *Id.* 46. 3. 89. pr. *Cod.* 4. 2. 17.

CHIROGRAPHUM, *Cirographum*, *Cy-rographum*. L. Lat. In Saxon law. A deed, charter, or instrument of conveyance in writing; a chirograph. *Spelman*, voc. *Charta*. *Ingulphus*, *ibid.* See *Charter*, *Charta*, and *infra*.

In English law. A deed or indenture executed in two parts, and divided by a cut through certain words written in the middle; called also *scriptum chirographatum*, or *charta cyrographata*; a chirograph. *Bract. fol.* 34. *Co. Litt.* 143 b. *Hargr. Co. Litt.* note 234, lib. 2. *Bl. Com.* 296. 1 *Reeves' Hist. Eng. Law*, 89. *Cowell*. *Blount*. See *Indenture*.

The word itself, through which deeds were cut or indented, and divided. 2 *Bl. Com.* 296.

A fine of lands. *Blount*.

In the civil and canon law. An instrument executed between two parties, as debtor and creditor, and called *chirographus*, because written only with the hand of one party, (sc. the debtor,) and left in the hands of the creditor. *Lindewode*, tit. *de Offic.*

Archidiaconus. c. 1, *apud Spelman*, voc. *Indentura*. Sometimes, however, used in the same sense as *syngrapha*, (q. v.) *Id. ibid.*

In modern law. An evidence of debt, as a bond, bill or note. *Chirographum apud debitorem repertum præsumitur solutum*. An evidence of debt found in the debtor's possession is presumed to be paid. *Halkerst. Max.* 20, cited *Broom's Max.* Introd. xv. *Bell's Dict.* Where a bill of exchange or promissory note is found in the possession of the drawee or maker, a presumption is raised that he has paid the money due upon the instrument. 1 *Tayl. Ev.* 117. See 14 *Mees. & W.* 379. *Broom's Max. ub. sup.*

* * In the Saxon times, any public instrument of gift or conveyance, attested by the subscription and crosses of the witnesses present, was called *chirographum*, a word taken from the Roman writers, who used it to signify a bond or obligation which a person wrote or subscribed with his own hand. *Juvenal*, xiii. 137. *Suet. Aug.* 87. The Normans, besides changing the mode of executing these instruments, altered their name also to *charta*. *Spelman*, voc. *Charta*. *Ingulphus*, cited *ibid.* and in *Cowell*. When the practice was afterwards introduced, of executing charters or deeds in *parts*, i. e. in a part and counterpart, (or as *Cowell* calls it, in *script* and *rescript*,) it was done as follows: The whole of the instrument was written *twice* on the same sheet or skin of paper or parchment, leaving a space in the middle, where certain *capital letters* were written. What these letters at first were, and in what form, does not precisely appear. *Cowell* says they were the capital letters of the alphabet. The idea of employing a *single word* for this purpose was probably borrowed from the civilians and canonists, who had the same fashion of executing their instruments, and who made use of the very expressive word *syngrapha* or *syngraphus*. *Lindewod.* tit. de offic. archidiaconus. c. 1, cited in *Spelman*, voc. *Indentura*. *Cowell*, voc. *Indenture*. See *Indenture*, *Syngraphus*. Instead of *syngraphus*, however, the word *CHIROGRAPHUM* was adopted, probably, from its ancient use in Saxon conveyances, (*supra*,) and from its convenient length, as well as appropriate meaning. After the instrument had been executed, with this word so written in capital letters between the parts, the parchment was divided by cutting it across, through the mid-

dle of these letters, so that when the two parts were separated, one would exhibit one half of the capital letters and one the other, and when joined, the words would appear entire. See *Indenture*. This cut or division was at first made in a straight line. Afterwards, the fashion came into use of cutting through the word in acute angles, (the cuts passing between the letters alternately,) like the *teeth* of a saw, (*instar denticulorum*), which gave these deeds the name of *indentures*. 1 *Reeves' Hist. Eng. Law*, 89. This was afterwards changed to a waving line, which seems to have been continued as long as the word itself, (now Englished and written *chirograph*,) or the practice of cutting was retained. From this peculiar formality, the instruments themselves so executed were called *chirographs*. 2 *Bl. Com.* 295. 1 *Reeves' Hist. ub. sup. Hargr. Co. Litt.* note 234, lib. 2.

The practice of executing deeds, (or charters, as they were termed) in this form, seems to have originally been confined to what were called *chartæ communes*, (common or mutual charters,) which are spoken of by *Bracton* under the name of *charta cyrographata*, (*quæ scinditur per medium, et una pars remanet parti uni, et altera alteri*.) *Bract.* fol. 34. *Glanv.* lib. 8, c. 1. The peculiar fashion of dividing or indenting through the word *chirograph* was continued in fines after it had been discontinued in ordinary deeds; and hence the foot or conclusion of the fine, where the word was used, came to be itself called the *chirograph*. 2 *Bl. Com.* 351; and *Appendix*, No. IV. § 5. *Blount*. See *Indenture*.

Other instruments besides charters were anciently prepared in the form of a *chirograph*. *Fleta*, in his description of the duties of a steward, (*senescallus*) says that he should inquire about the stock (*instaurato*) existing in every manor, the inventory of which ought to be set down in a *chirographed writing* between him and the serjeant. *Fleta*, lib. 2, c. 72, § 7.

CHIROTHECA, *Ciroteca*. L. Lat. In old English law. A glove. *Bract.* fol. 35 b. *Par chirothecarum*; a pair of gloves. *Towns. Pl.* 258.

CHIVAGE. See *Chevage*,

CHIVALRY. [L. Fr. *service de chevalier*; L. Lat. *servitium militare*.] In feudal law. Knight-service. Tenure in chivalry was the same as tenure by knight-service. 2 *Bl. Com.* 61, 62.

CHIVAUCHER, *Chivacher*, *Chivalchier*.

L. Fr. [from *chival*, a horse.] To ride; to ride over, or about. *Kelham*. *Chivauchants*; riding. *Keilw.* 82.

To perambulate. *Kelham*.

CHOA, Chou, Chu. L. Fr. Corrupted forms of *ceo*, (q. v.) *Kelham*.

CHOCHAUNT. L. Fr. Lying down. An old form of *couchant*. *Yearb.* T. 1 Edw. II. 9. *Chochauntz et levauntz*. *Id.*

CHOP-CHURCH, *Chop-chirch*, *Choppe-church*. In old English law. A name given to parsons who changed or exchanged their benefices. Its meaning may be inferred from a case in the Year Book, H. 9 Hen. VI. 19, in which trespass was brought against "A. of D. *chop-chirch*." Chant. for the defendant, prayed judgment of the writ, on the ground that the statute required an addition of surname to be given to the party; "and *chop-chirch* is no surname, any more than if he should say, 'A. of D. thief.'" But the court held that *chop-chirch* was not an occupation against law, and therefore the addition was good. The epithet, however, seems to have been an opprobrious one. Cowell and Blount call it a nick-name, and refer to the expression "to *chop* and change," as a common expression at that time, as it still continues to be. Blount says he had met with the word *church-chopper*, and gives an extract from a circular letter to suffragan bishops against *choppe-churches*, dated A. D. 1391, in which the abuses of the practice are exposed. *Spelman, de Conc.* vol. 2, fol. 642.

CHOREPISCOPUS. Græco-Lat. [*quasi* τοῦ χωρίου, of the country.] In old European law. A rural bishop, or bishop's vicar. *Spelman*. *Cowell*.

CHOSE. Fr. A thing. Generally used in combination with other words; as *chose in action*, *chose in possession*, &c. See *infra*. Sometimes written in Law French, *choce*. *Kelham*.

CHOSE IN ACTION. A thing in action. A thing of which one has not the possession or actual enjoyment, but only a right to it, or a right to demand it by action at law.* 2 *Bl. Com.* 396, 397. *Termes de la Ley*.—A personal right, not reduced to possession, but recoverable by suit at law. 2 *Kent's Com.* 351. Thus, money due on a bond, note, or other contract, is a chose in action, for a property in the money vests whenever it becomes payable, but there is no possession till recovery by course of law, unless payment be first voluntarily made. 2 *Bl. Com.* 396, 397. 2

Steph. Com. 74. 2 *Kent's Com.* 351. So a right to recover damages for breach of covenant, or for a tort, is a chose in action. *Id. ibid.* 1 *Chitty's Gen. Pract.* 99, and note.

A chose in action is a thing rather in *potentia* than in *esse*, though the owner may have as absolute a property in, and be as well entitled to such things in action, as to things in possession. 2 *Bl. Com.* 397, 398. It has been called with propriety, a chose in suspense. *Id.* 397. *Bro. Abr.* Chose in action. *Cowell*.

The term *chose in action* is one of comprehensive import. It includes the infinite variety of contracts, covenants and promises which confer on one party a right to recover a personal chattel or sum of money from another, by action. *Grier, J.* 8 *Howard's R.* 441, 449. A deed or title for land is not a *chose in action*. But a bond and mortgage is, or rather, a debt secured by bond and mortgage is a chose in action. *Id. ibid.* *Choses in action*, in the New-York statute against usury, are a particular species of property, which, on the death of the owner, would be inventoried as such, by his legal representatives. 3 *Comstock's R.* 344.

CHOSE IN POSSESSION. A thing in possession, as distinguished from a thing in action. See *Chose in action*. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. 2 *Bl. Com.* 408.

CHOSE LOCAL. A local thing; a thing annexed to a place, as a mill. *Kitchin.* fol. 18. *Cowell*. *Blount*. Answering probably to the *res immobilis* of the civil law.

CHOSE TRANSITORY. A thing which is moveable, and may be taken away or carried from place to place. *Cowell*. *Blount*.

CH'RE. A contraction of *chartre*.

CHRENECRUDA. L. Lat. A singular ceremony among the Salians, by which a poor person applied to a rich relative to pay his debt or fine. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand. *L. Salic.* tit. 61. *Spelman*, who describes it, finds the elements of the word in the Belg. *grunn*, green, and *gruud*, herb.

ΧΡΗΣΙΣ, Χρησις. Gr. In the civil law. Use; the use of a thing. *Dig.* 7. 8. 10. 1.

CHRISTIANITATIS CURIA. L. Lat. The court of Christianity; the court Chris-

tian, or ecclesiastical judicature, as opposed to the civil court, or lay tribunal. *Cowell*. See *Court Christian*.

CHRONICON PRETIOSUM. The title of a work written by Bishop Fleetwood, at the beginning of the 18th century, showing the value of money at different periods in English history. 1 *Bl. Com.* 173.

CHUEPA. L. Lat. In old records. Chop or exchange. *Cartular. Radings.* fol. 94. *Cowell*.

CH'UN. A contraction of *chescun*.

CHURCH. [Sax. *cyric*, *ciric*, *circ*; Sc. *kirk*; Lat. *ecclesia*; Fr. *eglise*.] An edifice appropriated to Christian worship and the performance of religious services.* A house consecrated to the worship of God among Christians. *Webster*. In English ecclesiastical law, a church is otherwise called a *benefice*, and includes the glebe, parsonage and tithes. 1 *Crabb's Real Prop.* 77, § 90. To entitle a place of worship to be adjudged a church in law, it must have administration of the sacraments and sepulture annexed to it. 2 *Inst.* 363. 1 *Wooddes. Lect.* 188. See *Ecclesia*.

A body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies.* *Webster*.

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 *Steph. Com.* 54. The word "church" is said to mean, in strictness, not the material fabric, but the cure of souls and the right of tithes. 1 *Mod.* 201. But see *Ecclesia*. For the American law under this head, see *United States Digest*, Church.

CHURCH BUILDING ACTS. Statutes passed in England in, and since the year 1818, with the object of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people. 3 *Steph. Com.* 152—164.

CHURCHESSET, Churchset, Cirset, Kirkset, Chirset. In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to *Fleta*, was paid as well in the time of the Britons as of the English. *Fleta*, lib. 1, c. 47, § 28. An annual tribute paid to the church in grain or other product; (*census vel tributum ecclesiæ; frumenti tributum*). *Spel-*

man, voc. *Cirset*. *Lindenbrog*, and *Domesday*, cited *ibid*. Sometimes written *churchsed*, and translated *churchseed*, (*semen ecclesiæ*). *Fleta*, ub. *sup.* Co. Litt. 88 b. But the proper spelling, according to *Spelman*, is *ciricset*, or *ciricseat*, (q. v.)

CHURCH RATE. A rate imposed upon the parishioners of a parish for the repairs of the church. Sometimes called a *church lay*. *Holthouse*. 1 *Wooddes. Lect.* 180.

CHURCH REEVE. A church warden; an overseer of a church, (*propositus ecclesiæ*). Now obsolete. *Cowell*. See *Reeve*.

CHURCH WARDENS. [L. Lat. *ecclesiæ guardiani*.] Guardians, overseers or keepers of the church. Parochial officers annually appointed by the parish, whose peculiar province it is to take care of the church, that is, to see to the repairs of the church, and to have the care of the goods belonging to it. 1 *Bl. Com.* 394, 395. 1 *Wooddes. Lect.* 180. 3 *Steph. Com.* 90, 91. *Cowell. Termes de la Ley*. They are the representatives of the body of the parish, and are taken, in favor of the church, to be, for some purposes, a kind of corporation at the common law, that is, they are enabled by that name to have a property in goods and chattels, and to bring actions for them, for the use and profit of the parish. 1 *Bl. Com.* 394. 3 *Steph. Com.* 90. 1 *Wooddes. Lect.* 161. *Story*, J. 9 *Cranch's R.* 43.

CHURL. [Sax. *ceorl*; L. Lat. *ceorlus*, *cirlus*, *cirliscus*.] In Saxon law. A free-man of inferior rank, chiefly employed in husbandry. 1 *Reeves' Hist. Eng. Law*, 5. —A tenant at will of free condition, who held land from a thane, on condition of rents and services. *Cowell*. See *Ceorl*.

CHYMIN. L. Fr. A way or road; a highway. *Yearb.* P. 6 Edw. III. 48. See *Chimin*.

CI, Cy, Si. L. Fr. So. *Pur ceo que fine est ci hault barre, et de ci graund force, et de ci puissant nature*; because a fine is so high a bar, and of so great force, and of so powerful a nature. *Stat. Modus Lev. Fin.* 2 *Inst.* 510.

Ci Dieu vous eyde (aide); so help you God. *Reg. Orig.* 302 b, 303. *Britton* uses *si*, (q. v.) See *Oath*.

CIBARIA. Lat. [pl. of *cibarium*, from *cibus*, food.] In the civil law. Food; victuals. *Dig.* 34. 1.

CIBATUS, Cibata. Lat. Victualled.

Cibas velas et parat; victualled, tackled and apparelled. *Towns. Pl.* 227.

CIENS. L. Fr. Here; hitherto. *Yearb. M.* 8 Edw. III. 29. *Cieins. M.* 10 Edw. III. 61, 62.

CIER, *Sier.* L. Fr. To mow. *Kelham.*

CIEUS. L. Fr. Those; such. *Kelham.*

CIGNES. L. Fr. Swans. *Yearb. P.* 7 Hen. VI. 21.

CIL. L. Fr. He. *Cil ky prendra*; he who shall take. *LL. Gul. Conq.* l. 5. See *Id.* l. 6.

CILI. L. Fr. He. *Kelham.* A corruption of *celui*.

CINCAUNT, *Sinkaunt.* L. Fr. Fifty. *Kelham.*

CINQUE, *Cink, Sink, Sinke.* L. Fr. Five. *Kelham.*

CINQUE PORTS. [L. Lat. *quinque portus*; five ports.] Five (now seven,) ports or havens on the S. E. coast of England, towards France, formerly esteemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings and Hythe; (sometimes called in the old books, Doure, Sandwyz, Romual, Hastings and Heya; *Bract.* fol. 118;) to which Winchelsea and Rye have been since added. They have similar franchises in some respects, with the counties palatine, and particularly an exclusive jurisdiction (before the mayor and jurats, [corresponding to aldermen,] of the ports,) in which the king's ordinary writ does not run. 3 *Bl. Com.* 79. They have a governor called the Lord Warden of the Cinque Ports, who is always the constable of Dover castle. *Id. ibid.* *P. Cyclopædia.* See *Warden of the Cinque Ports*. The members returned from these ports to parliament have always been termed *barons* of the Cinque Ports. *Brande.* See *Baro, Baron*.

The superior importance of these haven towns dates from a remote period, and originally grew out of their local situation, it being considered necessary, from their proximity to France, that they should be guarded with peculiar vigilance against invasion. *Cowell.* In the time of the Saxons there were but three, which are mentioned in Domesday Book, namely, Dover, Sandwich and Romney; to these the Conqueror is said to have added Hastings and Hythe, making the number which has ever since given them their name. *Crabb's Hist. Eng. Law*, 141. Their franchises

are expressly mentioned by Bracton, and, with some exceptions, are still preserved; although the towns themselves have long since lost their ancient importance. *Bract.* fol. 118. *Municipal Corporation Act, Stat. 5 & 6 Will. IV. c. 76, cl. 134, 135.*

CIPPI. L. Lat. [L. Fr. *cippe, ceps*.] In old English law. The stocks; an instrument for punishing offenders. *Quare vi et armis clausum et cippos ipsius abbatis apud Berton', in quibus cippis, Henricus le Smyth natus suus pro quibusdam inobedientis suis per ipsum abbatem positus fuit, fregit, &c.* Wherefore, with force and arms he broke the close and stocks of the said abbot at Berton, in which stocks Henry the Smyth his villain had been put by the said abbot for certain disobediences, &c. *Reg. Orig.* 96 b. Bracton and Fleta use the singular, in *cippo*. *Bract.* fol. 145 b. *Fleta*, lib. 1, c. 42, §§ 1, 2. See *Stocks*.

CIPPS, *Cips, Ceps, Seps.* L. Fr. Stocks. *Kelham.*

CIRCA. Lat. About; concerning; respecting; in relation to. *Bract.* fol. 188 b. *Fleta*, lib. 4, c. 10, § 8.

CIRCADA. L. Lat. In old English law. A tribute paid to the bishop or archdeacon for visiting the churches. *Dufresne. Whishaw.*

CIRCBOTA. L. Lat. [Sax. *circbote*, from *circ*, a church; and *bote*, restoration.] In Saxon law. The repairing of a church, (*ecclesiæ restauratio*). *Spelman*, voc. *Bota*.

CIRCSET, *Kirkset, Cyricset.* [properly *curset*, or *circaecat*, Sax. from *cyric*, a church, and *secat*, a portion.] In old English law. A tribute paid to the church. *Spelman.* See *Churcheset*.

CIRCUIT. [Lat. *circuitus*, from *circum*, around, and *ire*, to go; to go around.] A civil division of a country, state or kingdom, for the more convenient administration of justice; courts being held in the different circuits at stated periods, by the judges of the superior courts, who go around for that purpose. In England, there are eight of these judicial circuits, each embracing several counties, into which the judges go twice a year, viz., in the vacations after Hilary and Trinity Terms. 3 *Bl. Com.* 57, 58. 3 *Steph. Com.* 421, 423. *Warren's Law Studies*, 318. The United States are divided into nine circuits. 1 *Kent's Com.* 301. A similar division prevails in most of the individual states. See *Nisi Prius, Courts of assise and Nisi Prius, Circuit courts*.

Circuits, as the term is used in England, may be otherwise defined to be, *the periodical progresses of the judges* of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice. *P. Cyclopædia*. These modern circuits or progresses have taken the place of the *eyres* or *itineras* of the ancient system. See *Assises, Eyre, Iter*.

CIRCUIT COURTS. In American law. Courts held in the several federal and state circuits. The United States circuit courts are held by one of the justices of the supreme court appointed for the circuit, (and bearing the name, in that capacity, of *circuit judge*.) together with the district judge of the district in which they are held. Their business is not only the supervision of trials of issues in fact, but the hearing of causes as a court in banc; and they have equity as well as common law jurisdiction, together with appellate jurisdiction from the decrees and judgments of the district courts. 1 *Kent's Com.* 301—303.

The state circuit courts are usually held solely for the trial of issues of fact, like the English courts of *Assise and Nisi Prius*.

CIRCUIT PAPER. In English practice. A paper containing a statement of the time and place at which the several assizes will be held, and other statistical information connected with the assizes. *Holt-house*.

CIRCUIT OF ACTION. An old form of *circuit of action*, (q. v.) *Wingate's Max.* 680, max. 179. The law hateth circuit of action. *Id. ibid.* *Finch's Law*, b. 1, ch. 3, n. 73.

CIRCUITUS. Lat. [from *circa*, or *circum*, around, and *ire*, to go.] In old English law. A going around; a round-about way. *Oportebit me ire per circuitum; ubi prius ingressus fui per compendium*; I shall have to go by a round-about way, where I formerly entered by a short cut. *Fleta*, lib. 4, c. 18, § 1.

An area of space. *Id.* lib. 2, c. 2, § 2.

Circuitus. *Circuitus est evitandus*. Circuitry is to be avoided. 5 *Co.* 31. *Wingate's Max.* 680, max. 179. *Broom's Max.* [255.]

CIRCUITY OF ACTION. [L. Lat. *circuitus actionis*.] A longer course of proceeding to recover a thing sued for than is needful; called in some of the old books, *circuit of action*, (q. v.) *Termes de la Ley*. *Cowell*. A circuitous or round-about course

of legal procedure, instead of a direct and shorter one. As where a defendant, instead of availing himself of a counter claim against the plaintiff, [e. g. damages for breach of warranty,] in the same action, allows him to recover the full amount sued for, and then commences a cross action to recover his own demand. *Termes de la Ley*. 2 *B. & Ad.* 462.

CIRCUMDUCTION OF THE TERM. In Scotch practice. The sentence of a judge, declaring the time elapsed within which a proof ought to have been led, and precluding the party from bringing forward any further evidence. *Bell's Dict.*

CIRCUMSPECTE AGATIS. L. Lat. (Act circumspectly.) The title of a statute passed 13 Edw. I. A. D. 1285, and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. 2 *Reeves' Hist. Eng. Law*, 215, 216.

This statute is, in fact, in the form of a writ from the king to his justices, concerning the bishop of Norwich and his clergy, beginning: "*Rex talibus iudicibus salutem; Circumspecte agatis, &c.*," without any mention of the concurrence of parliament. 2 *Inst.* 487. *Barringt. Obs. Stat.* 123, [158], cited 3 *Bl. Com.* 88. It has, however, always been considered as a statute, and its authority as such is not questioned. 2 *Reeves' Hist. Eng. Law*, 215, 216. 2 *Inst. ub. sup.* 12 *Ad. & Ell.* 315. There is some doubt as to its date.

CIRCUMSTANCE. [L. Lat. *circumstantia*, q. v.] In the law of evidence. A relative fact; a fact standing in a certain relation to another fact, and from which, when proved, the existence of such other fact may be inferred or presumed. *Burr. Circ. Evid.* 121, note (d). A minor fact. *Theory of Pres. Proof*, 29. *Wills' Circ. Evid.* 27. An accompanying or incidental fact; an indicatory fact or indication, (Lat. *indicium*; Fr. *indice*).

The terms "circumstance" and "fact" are, in many applications, synonymous; but the true distinction of a circumstance is its relative character. "Any fact may be a circumstance with reference to any other fact." 1 *Benth. Jud. Evid.* 42, note. *Id.* 142. The force of the term appears in its plural form. Several circumstances are said to *stand around*, (*circum stare*) or

surround a principal fact. *Burr. Circ. Evid. ub. sup.*

CIRCUMSTANTIA. L. Lat. [from *circum*, around, and *stare*, to stand.] A circumstance. *In omnibus circumstantiis. Bract. fol. 138. Circumstantias. Id. 153. Circumstantiis. Fleta, lib. 5, c. 3, § 7.* This word is often treated as being essentially plural in its form, importing facts standing around (*circum stantia*;) another or principal fact.

CIRCUMSTANTIAL EVIDENCE. Evidence derived from *circumstances*, as distinguished from *direct* and positive proof. Evidence operating in the way of *inference* from *circumstances*.* Otherwise called *indirect* or *oblique*, (*Vinnius Jurispr. Contr. lib. 4, c. 25.*) *inferential* (4 *Barr's R.* 272,) and *argumentative* evidence. Mackintosh, arg. 19 *How. St. Trials*, 33. Frequently termed from the characteristic process of presumption, involved in its application, *presumptive evidence*; and by some writers the doctrine of *presumptions*. 3 *Bl. Com.* 371. 3 *Steph. Com.* 614, 615, and note. See *Presumptive evidence*.

* * The term *presumptive* is frequently used as synonymous with *circumstantial*, in its application to evidence, but it is not so used with strict accuracy. *Wills on Circumst. Evid.* chap. 2, sect. 1. 1 *Greenl. on Evid.* § 13. According to Mr. Wills, circumstantial and presumptive evidence differ as genus and species. *Wills on Evid. ub. sup.* All presumptive evidence is circumstantial, because necessarily derived from or made up of *circumstances*, but all circumstantial evidence is not presumptive, that is, it does not operate in the way of *presumption*, being sometimes of a higher grade, and leading to necessary conclusions, instead of probable ones. *Burr. Circ. Evid.* 7, 77, 78. The great peculiarity of circumstantial evidence is its *indirect* character, it being made to bear upon the principal fact in question, (the *factum probandum*;) through other and minor or collateral facts; a fact of this last kind being distinguished as *factum probans*. See *Factum probandum*. Mr. Wills, indeed, considers circumstantial evidence to be of a nature identically the same with direct evidence, and what he observes in confirmation of this position is undoubtedly true, that as to the *minor facts* themselves, the evidence by which they are to be established must be direct in its nature; but it is certainly not the less true that as to the *princi-*

pal fact, this same evidence is wholly indirect. The following distinctions made by Mr. Best, in his treatise on *Presumptions of law and fact*, may serve to illustrate more fully the nature of circumstantial evidence. When the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness and veracity of which there seems no reason to question, the evidence of that fact is said to be *direct* or positive. When, on the contrary, the existence of the principal fact is *only inferred* from one or more circumstances which have been established directly, the evidence [of such principal fact] is said to be *circumstantial*. And when the existence of the principal fact does not follow from the evidentiary facts as a necessary consequence of the law of nature, but is deduced from them by a process of probable reasoning, the evidence and proof are said to be *presumptive*. *Best on Presumptions*, 246. *Id.* 12. See 1 *Greenl. Evid.* § 13.

CIRCUMSTANTIBUS, Tales de. See *Tales de circumstantibus*.

CIRCUMVENTION. [Lat. *circumventio*, from *circum*, around, and *venire*, to come.] Deceit; fraud; stratagem; imposition. Deceit practised to induce a weak person to enter into a deed. *Bell's Dict.*

CIRLISCUS. L. Lat. A ceorl, or churl. *Spelman.* See *Ceorl*.

CIROGRAPHUM. L. Lat. In old English law. A chirograph. An old form of *chirographum*, (q. v.) *Fleta, lib. 1, c. 8, § 4. Id. c. 13, § 14.*

Cirographatum; chirographed, in the form of a chirograph. *In scripto cirographato*; in a chirographed writing. *Fleta, lib. 2, c. 72, § 7.*

CIROTECA. L. Lat. In old English law. A glove. A covering for the hand, worn by threshers, (*triturores*;) and fanners (*ventrices*) of grain. *Fleta, lib. 2, c. 82, § 2.* An old form of *chirotheca*, (q. v.)

CIST, Cyst, Chist. L. Fr. [from Lat. *cista*, q. v.] In old English law. A chest; a box. *Detinue de tij chists ove divers chartres. Yearb. H. 9 Hen. VI. 20. Detinue d'un chist plein des ch'res*: detinue for a chest full of charters. *M. 11 Hen. VI. 18, 19. Cist. 14 Hen. VI. 1. Cyst. Add. after T. 20 Hen. VI. 34.*

CISTA. Lat. In civil and old English law. A chest or box, for containing

charters, deeds or other things. *Dig.* 16. 3. 1. 41. *Reg. Orig.* 110 b. *Towns. Pl.* 192. 3 *Reeves' Hist. Eng. Law*, 73. Translated in Law French, *cist*, *cyst* and *chist*, indifferently. See *Cist*.

CISTERNA. Lat. In civil and old English law. A cistern; a receptacle for rain-water. *Dig.* 43. 22. 4. *Fleta*, lib. 4, c. 27, § 8.

CITATIO. L. Lat. [from *citare*, to summon.] A citation or summons to court. *Skene de Verb. Sign.* voc. *Adjurnatus*, citing *Wesenbec. in Parattil.* tit. de in jus vocando, nu. 13. *Citationes non concedantur priusquam exprimatur super quâ re fieri debet citatio*; citations should not be granted before it is expressed upon what ground a citation ought to be issued. 12 *Co.* 44.

CITATION. [Lat. *citatio*, q. v.] In practice. The process used in the ecclesiastical courts, to call a party before them. 3 *Bl. Com.* 100. 3 *Steph. Com.* 720. It is the first step which is taken in an ecclesiastical cause; and is somewhat analogous to the writ of *capias* or summons at common law, or the subpoena in chancery. *Holthouse*.

In Scotch practice. The calling of a party to an action, done by an officer of court under a proper warrant. *Bell's Dict.*

In American practice. An official call or notice to appear in court. *Forbes, J.* 1 *Cushing's R.* 529. A process used in surrogates' courts, requiring the attendance of parties on the probate of wills. *Dayton's Surrogate*, 18, 21, and Appendix No. 5.

CITE, Citee, Cité. L. Fr. City; a city. *Citee de Loundr'*; city of London. *Yearb. M.* 3 Edw. II. 55. *Cité de Londres.* P. 7 Hen. VI. 27. *En la citee de Everwike*; in the city of York. T. 10 Edw. III. 3.

CITIZEN. L. Fr. Citizen; a citizen. *Les citezeinz de Loundr'.* *Yearb. M.* 3 Edw. II. 55.

CITIZEN. [Lat. *civis*.] Strictly, a member of a commonwealth (*civitas*), possessing all the rights which can be enjoyed or exercised under its fundamental laws.

In English law. A freeman, or one who resided and kept a family in a city. 1 *Roll. R.* 138—149. An inhabitant having certain rights or privileges. "Every inhabitant is not a citizen." *Com.* 689. The citizens of London were formerly distinguished into five kinds. See *Calthrop's R.* 34, 36.

The representative of a city in parliament, as a burgess is the representative of

a borough. 1 *Bl. Com.* 174. 2 *Steph. Com.* 362, 363. But see *Burgess*.

In American law. One who, under the constitution and laws of the United States, has a right to vote for public officers, and who is qualified to fill offices in the gift of the people. 3 *Story on Const.* 1687, (1st ed.)—A free inhabitant, born within the United States, or naturalized under the law of Congress. 2 *Kent's Com.* 258, note. The term "citizen" is confined by the Constitution of the United States, to white persons. Indians and negroes are not citizens of the United States. 19 *Howard's R.* 393. 4 *Comstock's R.* 294. A citizen of the United States, residing permanently in any state, is a citizen of that state. Marshall, C. J. 1 *Brock. R.* 389, 391. But a person may be a citizen of a state, without being a citizen of the United States. 19 *Howard's R.* 393. See *United States Digest*, Citizen.

* * The term *citizen* has been supposed to have a peculiar reference to a *city*, importing radically, the inhabitant of a *city*, with certain privileges. In England, where citizens at large are called *subjects*, the word seems to have been always used in this sense. See *Fleta*, lib. 2, c. 55, and *supra*. But in the United States, it is used to express the relations of persons, whether inhabitants of a city, or other place, to the state, or the Union. They are termed, not citizens of cities, but of *states*, or of the *United States*.

CITY. [L. Fr. *cite*, *citie*, *citee*, *cytee*; L. Lat. *civitas*.] In English law. A town [or borough, *Co. Litt.* 108 a, b,] incorporated, [and usually of principal note or importance, 1 *Steph. Com.* 115,] which either is, or has been the see of a bishop. 1 *Bl. Com.* 114. *Termes de la Ley*.

* * This definition has been made the subject of considerable criticism. The qualities of being *incorporated*, and of being or having been the *see of a bishop*, do not appear to have been invariably attached to cities in England; Westminster being a city, though not incorporated, and Thetford and several other places being but towns, though once the seats of bishops. *Co. Litt.* 109 b. *Hargr. note ibid.* P. *Cyclopædia*. Dr. Wooddeson remarks as to the latter feature, that whatever distinction in very early times prevailed between cities and towns in England, it certainly was not this; for in the great council of bishops and abbots, held in the year 1072,

by command of Pope Alexander II., by the consent, and in the presence of the king, for settling the disputed superiority between the archbishops, it was decreed that bishops' sees should be *transferred from towns to cities*. This decree, he thinks, probably gave rise to the opinion that a bishop's see constituted a city, in the case also of the new foundations. 1 *Wooddes. Lect.* 180, citing *Ingulph. Hist.* 92, 93. Spelman alludes to the same decree and its consequences, in confining the title of *city* to the towns or boroughs in which such sees were located; (*civitatis titulus apud cathedrales tantum burgos remanebat.*) *Spelman, voc. Burgus.* See *Borough, Burgus.* The practice of locating bishops' sees in cities, may be traced to a constitution of the Emperor Zeno: *Ἐκάστη πόλις ἴδιον ἐπίσκοπον ἔστω*; Let every city have its own bishop. *Cod.* 1. 3. 36. As to the modern distinction, in England, between a city and any other incorporated town or borough, it seems to be little more than nominal. Both cities and boroughs have the same form of local government, and both send special representatives to parliament, the only difference being, that in the one case these representatives are or have been called *citizens*, and in the other *burgesses*. *Spelman, voc. Burgus. Municipal Corporation Act*, cited 3 *Steph. Com.* 193, *et seq.* In *Brande's Dictionary*, it is said that a city differs in no respect but that of superior dignity, from another borough. See *P. Cyclopædia*. And the distinction between citizen and burgess seems now to be disregarded. See 1 *Man. & Gr.* 1, note (a).

CITY. In American law. A corporate town; a town of the larger or more important class, incorporated, and governed by a mayor and council of aldermen.* *Webster.*

CIVIL. [Lat. *civilis*, q. v.] Belonging or relating to, or affecting a person as a *citizen* (*civis*). Relating to, or affecting the rights or duties of a citizen, particularly as between one citizen and another.*

Relating to the community, or to the policy and government of the citizens and subjects of a state. *Webster.*

The meaning of this term will be best understood from its application, as under the following heads:

CIVIL ACTION. An action brought to recover some civil right, or to obtain redress for some wrong, not being a crime or misdemeanor. 3 *Bl. Com.* 2, 116. In this latter respect, it is distinguished from a

criminal action or prosecution. See *Civil right, Civil injury.*

CIVIL CORPORATIONS. One of the two classes into which lay corporations are divided; the other division embracing what are termed *eleemosynary* corporations. 3 *Steph. Com.* 170. Municipal corporations, (as counties, cities, towns and villages,) incorporated manufacturing, banking, insurance and trading companies, and the like, are examples of civil corporations.* *Id. ibid.* 2 *Kent's Com.* 275. See *Eleemosynary corporations.*

CIVIL DEATH. [Lat. *mors civilis*.] That change of a person's civil condition which is produced by certain acts or offences on his part; and which extinguishes his civil rights and capacities, just as natural death extinguishes his bodily existence. It anciently followed on a man's entering into religion, (i. e. going into a monastery,) or abjuring the realm; and is still in England the consequence of being attainted of treason or felony. *Bract. fol.* 301 b, 421 b. 1 *Steph. Com.* 132. 1 *Bl. Com.* 132. 2 *Id.* 121. 4 *Id.* 380. In New-York, it follows on a person's being sentenced to imprisonment for life in a state prison. 2 *Rev. St.* [701,] 586, § 20. See *Civiliter mortuus.*

CIVIL INJURY. An infringement or privation of some civil right, and which is a subject for civil redress or compensation; as distinguished from a *crime*, which is a subject for punishment.* 3 *Steph. Com.* 556. See *Civil right.*

* * Civil injuries are defined or described by Sir W. Blackstone as "*private wrongs*," being "an infringement or privation of the *private* or civil rights belonging to individuals, considered as individuals," and in this respect distinguishable from crimes or misdemeanors, which "are a breach and violation of *public* rights and duties, which affect the whole community, considered as a community." 3 *Bl. Com.* 2. This distinction between *private* and *public* hardly seems to express that which exists between civil injuries and crimes; as a wrong may obviously be of a public character, affecting (though indirectly,) a whole community, and yet, at the same time, in its nature, only a *civil* injury. The withholding of debts or duties from a public (municipal) corporation, a state, and the national government itself, is obviously of this description; the remedy being merely by a *civil* action, though a community is the complaining party.

The distinction between *private* and *public* rights, in the definition of civil injuries, has been properly rejected by Mr. Stephen, who, in place of the definition of Blackstone, describes civil injuries as "the violation of *private* or *public* rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation," and distinguishes them in this respect from crimes, which "are the violation of *public* or *private* rights, when considered in reference to their evil tendency as regards the community at large, and accordingly visited with punishment." 3 *Steph. Com.* 356, and note (d).

CIVIL LAW. [Lat. *Jus civile Romanum*.] The Roman law, as comprised in the Code, Pandects, Institutes and Novels of Justinian, and his successors, constituting together what is termed the *Corpus Juris Civilis*, as distinguished from the canon and common law. *Butler's Hor. Jurid.* 30. *Tayl. Civ. Law*, 134. 1 *Kent's Com.* 538—543. See *Corpus Juris Civilis*.

* * The Roman law of an earlier period was introduced into Britain on its subjugation by Agricola, towards the end of the first century, and is supposed to have prevailed there until the abandonment of the island by the Romans, at the beginning of the fifth century; after which it was superseded by the laws of the Saxons and other invaders. See *Roman law*. The *civil law*, properly so called, was first introduced during the reign of Stephen, (about the middle of the twelfth century,) and is represented by Blackstone and other standard writers on the law of England, as a foreign and rival system, between which and the native *common law* a continual struggle was maintained until the reign of Edward I. when the common law obtained a complete and permanent victory; the civil law being thenceforward confined within certain limits, and regarded or tolerated as a merely auxiliary and subordinate system. 1 *Bl. Com.* 18—25. 4 *Id.* 421—425. 3 *Id.* 87. It is not surprising that the merits of the civil law, and its influence upon the law of England, should have been differently viewed and represented by English civilians; but none appear to have gone the length of Mr. Spence, who, in his treatise on *The Equitable Jurisdiction of the Court of Chancery*, has undertaken to prove the *common law itself* to be, in many of its most important and (as

generally supposed) characteristic doctrines and proceedings, of decidedly Roman origin. See *Common law*.

CIVIL LAW. [Lat. *jus civile*.] That system of law which a community, state or nation establishes for its own peculiar government; (*quod quisque populus sibi jus constituit*;) as distinguished from the *jus gentium*, or general law of nations. *Inst.* 1. 2. 1. *Tayl. Civ. Law*, 134. Otherwise termed by Blackstone, *municipal law*. 1 *Bl. Com.* 44. See *Jus civile*, *Jus gentium*, *Municipal law*.

That division of municipal law which is occupied with the exposition and enforcement of *civil rights*, as distinguished from *criminal law*. See *Criminal law*.

CIVIL LIBERTY. The liberty of a member of society, being a man's natural liberty, so far restrained by human laws, (and no farther,) as is necessary and expedient for the general advantage of the public. 1 *Bl. Com.* 125. 2 *Steph. Com.* 487. The power of doing whatever the laws permit. 1 *Bl. Com.* 6. *Inst.* 1. 3. 1.

* * The above definitions are founded in a great degree upon that of the civil law, which is quoted by Blackstone in one of the passages above referred to, as "*Facultas ejus quod cuique facere libet, nisi quid vi aut jure prohibetur*;" (the power of doing whatever one pleases, except what is prohibited by force or law;) and in the other, as "*Facultas ejus quod cuique facere libet nisi quid jure prohibetur*;" (the power of doing whatever one pleases, except what is prohibited by law). The definition, as given by the Institutes of Justinian, is in the following words: "*Libertas est naturalis facultas ejus quod cuique facere libet, nisi quid vi aut jure prohibetur*." Liberty is the natural power of doing whatever one pleases, except what is prohibited by force or law. *Inst.* 1. 3. 1. This is adopted by Bracton, almost in terms, and copied from him by Lord Coke. *Bract.* fol. 46 b. *Co. Litt.* 116 b. See *Libertas*. The emendation of Blackstone, it will be seen, consists in the very proper omission of the objectionable words "*vi aut*;"—liberty, according to any correct idea of the term, admitting of no restraint by force, as independent of law.

CIVIL LIST. In English politics. An annual sum granted by parliament, at the commencement of each reign, for the expenses of the royal household and establishment, as distinguished from the general

exigencies of the state; being a provision made for the crown out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. 2 *Steph. Com.* 591. 1 *Bl. Com.* 332.

The term *civil list* was formerly applied in England, to the list of all the expenses of the government, or of all the heads of public expenditure, excepting those of the army, the navy, and the other military departments. *Id. ibid. Brande.* And this seems to be its present meaning, as applied to the expenditures of the government of the United States.

CIVIL RIGHT. The right of a citizen; the right of an individual as a citizen; a right due from one citizen to another, the privation of which is a *civil injury*, for which redress may be sought by a *civil action*.

CIVILIAN. One who is skilled or versed in the civil law. A doctor, professor or student of the civil law. A writer on the civil law.

CIVILIS. Lat. [from *civis*, a citizen.] Civil, as distinguished from criminal. *Civilis actio*; a civil action. *Bract.* fol. 101 b, 102. *Civilis causa*; a civil cause. *Id. ibid. Placita civilia*; civil pleas. *Fleta*, lib. 2, c. 1, § 25. *Injuriae civiles*; civil injuries. *Id.* lib. 2, c. 1, § 5.

Civil; belonging to a *civitas* or state. *Jus civile*; civil law, the particular law of a state, as distinguished from *jus gentium*, the common law of nations. *Inst.* 1. 2. 1, 2.

CIVILISTA. L. Lat. In old English law. A civil lawyer or civilian. *Dyer*, 267.

CIVILITER. Lat. Civilly; by a civil course of procedure. This term, with its opposite *criminaliter*, occur in the civil law, from which source they were introduced (most probably through Bracton) into the law of England. *Sciendum est de omni injuriâ, cum qui passus est, posse vel criminaliter agere vel civiliter*; it is to be known (or observed) concerning every injury, that he who has suffered it may sue either civilly or criminally. *Inst.* 4. 4. 10. *Cum actio fuerit mere criminalis, institui poterit ab initio criminaliter vel civiliter*; where the action was merely criminal, it may be prosecuted from the beginning criminally or civilly. *Bract.* fol. 102.

Civilly; as a citizen. See *Civiliter mortuus*.

CIVILITER MORTUUS. L. Lat. Civilly dead; dead as a citizen; dead in law.

(L. Fr. *mort en ley.*) *Litt.* sect. 200. Deprived of all civil rights and capacities, such as those of taking, holding and transmitting property; the rights of suffrage, of suing, of giving testimony in courts, &c.* See *Civil Death*. A monk was accounted *civiliter mortuus*; and when he entered into religion might, like other dying men, make his testament and executors. 1 *Bl. Com.* 132.

CIVIS. Lat. In the Roman law. A citizen; as distinguished from *incola*, (an inhabitant); origin or birth constituting the former, domicile the latter. *Code*, 10. 40. 7. *Phillimore's Law of Domicil*, 25, 26. *Civibus civitatis legatum vel fidei commissum datum, civitati relictum videtur*; that which is bequeathed or given in trust to the citizens of a state, is considered as left to the state. *Dig.* 34. 5. 2.

CIVITAS. Lat. [from *civis*, a citizen.] In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis*; the law of a state; civil law. *Inst.* 1. 2. 1, 2. *Civitates federatæ*; towns in alliance with Rome, and considered to be free. *Bull. Hor. Jur.* 29.

Citizenship; one of the three *status*, conditions or qualifications of persons. 1 *Mackeld. Civ. Law*, 129, § 119. See *Jus civitatis*.

CIVITAS. Lat. and L. Lat. In old English law. A city. (Lat. *urbs*.) *Civitas London habere omnes antiquas libertates*; the city of London shall have all its ancient liberties. *Mag. Cart.* 9 Hen. III. c. 9. *Id. Johan.* c. 13. By *civitas* is properly meant the inhabitants, (*incolæ*;) *urbs* includes the buildings. But the one is commonly taken for the other. *Co. Litt.* 109 b. See *Urbs*.

CLAIA, Cleia, Cleia, Clida. L. Lat. In old English law. A hurdle. *Spelman. Reg. Orig.* 103 b. Fitzherbert translates it *clay*. *F. N. B.* 95 A. See *Clay*.

CLAIM. [L. Lat. *clameus, clamus, clamea, clameum, clamor*; *vindicatio*.] A challenge [or demand] by any man, of the property or ownership of a thing, [or of some interest in it,] which he has not in possession, but which is withholden from him unlawfully. *Termes de la Ley.* *Cowell. Blount. Litt.* sect. 420. *Plowd.* 359 a. 4 *Sandford's Ch. R.* 381.—An unascertained right to property in the possession of another. *Bell's Dict.*—A right or title, actual or supposed, to a debt, privilege, or other thing in the possession of another.

Gardiner, J., 2 *Comstock's R.* 245, 254. The means to an end, and not the end itself. *Id. ibid.* A claim for dower is not an estate in dower. *Id.* Claims include notes. 28 *Vermont R.* 645.

A demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. Story, J. 16 *Peters' R.* 539, 615.

CLAM. Lat. In the civil law. Covertly; secretly. See *Vi aut clam*.

CLAMARE. L. Lat. In old English law. To claim; to demand or challenge; to assert a right to a thing. *Spelman. Clamans*; claiming. *Reg. Orig.* 36. *Clamantis. Fleta*, lib. 1, c. 7, § 8.

To complain. *Glanv.* lib. 1, c. 5.

To cry out; to publish or declare aloud; to proclaim. *Facias clamari et sciri*; you shall cause to be proclaimed and known. *Bract.* fol. 109 b.

To cry, as a newly born child. *Fleta*, lib. 4, c. 17, § 10.

CLAMEA, *Clamia*. L. Lat. In old English law. A claim. *Reg. Orig.* 19 b. *De clamia admittenda. Id. ibid.*

Clameum, clameus; a claim. *Co. Litt.* 291 b. *Bract.* fol. 7, 435 b. *Clamium, clamus. Fleta*, lib. 6, c. 53, § 1.

CLAMOR. L. Lat. [*L. Fr. clamur.*] In old English law. A claim or complaint; clamour. *Ne amplius inde clamorem audiamus*; that we may hear no more complaint thereof. *Fleta*, lib. 2, c. 62, § 2. *In misericordia pro falso clamore suo*; in mercy for his false claim or clamour. A common clause in old judgment records. See *Misericordia*.

A cry, or outcry. *Levare hutesium et clamorem*; to raise the hue and cry. *Bract.* fol. 16 b, 115 b, 358. Called by *Glanville*, *clamor popularis*; the cry of the people. *Glanv.* lib. 14, c. 3. Called by *Fleta*, *clamor patriæ*; the cry of the country. *Fleta*, lib. 1, c. 24, § 1.

The cry of a newly born child. *Id.* lib. 6, c. 55, §§ 4, 6.

CLARE CONSTAT. L. Lat. (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. *Ersk. Inst.* b. 3, tit. 8, § 71. See *Bell's Dict.*

CLAREMETHEN, *Clamarthen*. In old Scotch law. The warranty of stolen cattle or goods; the law regulating such warranty. *Skene de Verb. Signif.*

CLARENDON, *Constitutions of. Cer-*

tain declaratory ordinances, in sixteen articles, brought forward by King Henry II. at a great council held at Clarendon, A. D. 1164; and confirmed, A. D. 1176, at a council held at Northampton. 1 *Reeves' Hist. Eng. Law*, 75—79. Their object was to define the limits between civil and ecclesiastical jurisdiction; to prevent the further encroachments of the clergy; and to abolish the abuses which had arisen from the gradual and increasing usurpations of the pope.* 4 *Bl. Com.* 422. *P. Cyclopædia.* 1 *Reeves' Hist. ub. sup.* *Crabb's Hist. Eng. Law*, 110, 111. A transcript of these constitutions is given in Lord Lyttleton's life of Henry II. See *Hale's Hist. Com. Law*, 164—167 note, (Runnington's ed.)

CLARIFICATIO. Lat. In old Scotch law. A making clear; the purging or clearing (clenging) of an assise. *Skene de Verb. Sign.* citing *Ass. Reg. Dav.* c. 3. *Clarificatio debiti*; the clearness of a debt, which is clearly and sufficiently proved and verified. *Id.* citing *Leg. Forest.* c. probato, 86.

CLASS. [*Lat. classis.*] An order or rank of persons or things. A number of persons or things arranged collectively under one head, having certain qualities in common; such as creditors, legatees, &c.

CLASSICI. [*Lat. from classis, a fleet.*] In the Roman law. Persons employed in servile duties on board of vessels. *Cod.* 11. 12.

CLAUDERE. L. Lat. In old English law. To enclose; to turn open fields into closes and enclosures. *Cowell.* See *Close*.

To close, finish or end. *Diem clausit extremum*; (he) closed his last day. See *Diem clausit extremum*.

CLAUSE. [*L. Lat. clausi, clausæ.*] In old English law. Close, as distinguished from patent. See *Clausum, Close, Patent*.

CLAUSE. [*Lat. clausula.*] A part of a written instrument enclosing certain words; a sentence or part of a sentence in a deed, will, lease, or other private writing, or in a statute. See *Clausula*.

CLAUSE ROLLS, or CLOSE ROLLS. [*L. Lat. rotuli clausi.*] Rolls preserved in London, containing the records of writs close, *literæ clausæ*, &c. See *Close Rolls*.

CLAUSTRUM. Lat. In the Roman law. A bar for securing a door. *Claustra*; bars. *Dig.* 19. 1. 17.

CLAUSTURA. L. Lat. [*from claudere, q. v.*] In old English law. An en-

closure, or that which fences it. *Blount. 2 Mon. Angl.* 403.

Brush-wood for hedges or fences. *Cowell. Kennell's Par. Ant.* 247.

CLAUSULA. L. Lat. [from *claudere*, to enclose.] A clause; a sentence or part of a sentence in a written instrument or law. So called, as *enclosing* or including certain words. *Per clausulam contentam in charta. Bract. fol.* 17 b, 22 b. *In clausula de Nisi Prius*; in the clause of Nisi Prius. *Fleta, lib.* 5, c. 11, § 7.

Clausula quæ abrogationem excludit ab initio non valet. A clause [in a law] which precludes its abrogation, is void from the beginning. *Bacon's Max.* 77. A clause of this kind is called by Lord Bacon *clausula derogatoria*, or *clausula de non obstante. Id.* 74. *Broom's Max.* 24.

Non impedit clausula derogatoria quominus ab eadem potestate res dissolvantur a quibus constituuntur. A restraining or precluding clause does not [is of no force to] prevent things [laws or acts] from being dissolved by the same power by which they are made. *Bacon's Max.* 74, *regula* 19.

Clausula generalis non refertur ad expressa. A general clause does not refer to things expressed. *8 Co.* 154.

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum illis quæ speciatim dicta fuerant. A general clause of remainder does not embrace those things which are of the same kind with those which had been specially mentioned. *Loffis' R. Appendix*, 419.

Clausula vel dispositio inutilis per presumptionem remotam, vel causam ex post facto non fulcitur. A useless clause or disposition [one which expresses no more than the law by intendment would have supplied,] is not supported by a remote presumption [or foreign intendment of some purpose, in regard whereof it might be material] or by a cause arising afterwards, [which may induce an operation of those idle words]. *Bacon's Max.* 82, *regula* 21. *Broom's Max.* [521.]

Clausula inconsectæ semper inducunt suspicionem. Unusual clauses [in an instrument] always induce suspicion. *3 Co.* 81. *Broom's Max.* 217.

CLAUSUM. L. Lat. [from *claudere*, q. v.] In old English law. Close. A term applied to writs. *Clausum vel apertum*; close or open. *Bract. fol.* 188, 372 b. *Fleta, lib.* 2, c. 13, § 6. See *Close*.

A close. *2 Bl. Com.* 209. *1 Salk.* 254.

Infra clausum; within the close. *Bract. fol.* 97 b. "The word *clausum* imports possession." *10 Mod.* 141. But see *Id.* 169, 170.

An enclosure. *Fleta, lib.* 2, c. 47, § 1.

CLAUSUM FREGIT. L. Lat. (He broke the close.) In pleading and practice. Technical words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit*, (q. v.) See *Breach of close*.

The breaking of a close. "A *clausum fregit*" called a cause of action. *11 Mod.* 304.

CLAUSUM PASCHÆ. L. Lat. [L. Fr. *cluse de Pâsche*.] In old English practice. The close of Easter; the octave, (*octas* or *utas*, the eighth day after the feast) of Easter. *Stat. Westm.* 1, pr. 2 *Inst.* 157. *Cowell. Blount.* So called because it closed the feast. *Blount.*

CLAUSURA. L. Lat. [from *claudere*, q. v.] In old English law. An enclosure. *Clausura heyæ*; the enclosure of a hedge. *Cowell.*

CLAUSURE. L. Fr. An enclosure. *Le clos est environ' ove un clausur'*; the close is surrounded with an enclosure. *Yearb.* P. 20 Hen. VI. 18.

CLAVES. Lat. Keys. *Dig.* 19. 1. 17.

CLAVES CURIÆ. L. Lat. The keys of the court. A term applied, in old Scotch law, to the officers of a court, such as the serjeant, clerk, and dempster or doomster. *Skene de Verb. Sign. voc. Curia.*

CLAVES INSULÆ. Lat. The keys of the island. A term applied, in the Isle of Man, to twelve persons to whom all doubtful and important cases were referred. *Cowell. Blount.*

CLAVIA. L. Lat. In old English law. A club or mace; (Lat. *clava*.) Tenure *per serjeantiam clavia*, by the serjeanty of the club or mace. *Cowell.*

CLAVUS. Lat. A nail. *De ferris et clavis*; for horse-shoes and nails. *Fleta, lib.* 2, c. 74, § 3.

CLAWA. L. Lat. A close, or small enclosure. *Cowell.*

CLAY. L. Fr. and Eng. [L. Lat. *clais*.] In old English law. A hurdle out of which sheep folds were made. *Les clayes. Yearb.* H. 3 Edw. III. 7. *Des-joiner' les cleyes*; they broke apart the clays. P. 8 Edw. III. 48.

CLEARANCE. In maritime law. The name of a certificate given by the collector of the port from which a vessel is about to

sail, to the master, describing the vessel, cargo, and port of destination; and stating that he has entered and *cleared* his vessel according to law. It is obtained on delivery to the collector of a manifest of the cargo, sworn or affirmed to by the master. The penalty in the United States for sailing without a clearance is five hundred dollars. *Act of Congress, March 2, 1799, § 98. Jacobsen's Sea Laws, 303.*

CLEARING. In mercantile law. A method of making exchanges and settling balances, adopted among banks and bankers. *Gillb. on Banking, 16—20.* See an account of the New-York Clearing House, in the Appendix to *Cleveland on the Banking System of the State of New-York, 1857.*

CLEARING HOUSE. The place where the business of *clearing*, (q. v.) is carried on.

CLEMENTINE CONSTITUTIONS. [*Lat. Clementinæ (or Clementis Papæ) Constitutiones.*] A collection of the decretals and constitutions of Pope *Clement V.*; published A. D. 1308, (or 1313, according to some,) under the title of *Liber septimus decretalium*; being the *seventh* book, in order of time, of the collection of the decisions and rescripts of the popes on matters of ecclesiastical discipline, and also on matters concerning laymen, which then came within the cognizance of the ecclesiastical courts. *P. Cyclopædia.* These constitutions were authenticated by Pope John XXII. A. D. 1317, and form part of the *Corpus Juris Canonici*, or body of the canon law. 1 *Bl. Com. 82. Butler's Hor. Jur. 116. See Canon Law.*

CLENGE. In old Scotch law. To clear or acquit of a criminal charge. Literally, to cleanse or clean, (*Lat. mundare*). *Skene de Verb. Sign. voc. Assisa.*

CLEP AND CALL. In old Scotch practice. A solemn form of words prescribed by law, and used in criminal cases, as in pleas of wrong and unlaw. "As when the persewer did *clep and call* the defender with wouth wrang and unlaw, in harming and skaithing of him of sik ane thing, or of sik ane summe of silver mair or lesse, to his great harme and skaith." *Skene de Verb. Sign.*

CLER, Cleur, Clur. L. Fr. A clerk. *Kelham. De clers de nostre court de la chancellerie, et de lun bancke et de lauter, et de clers del eschequer;* of the clerks of our court of the chancery, and of the one bench and of the other, and of the clerks of the exchequer. *Britt. c. 21.*

CLERE. L. Fr. Clear; confident. *Dyer, 31, (Fr. ed). Plain. Keilw. 75 b. Clerement; clearly. Dyer, 32.*

CLERGY. [*L. Lat. clerus.*] In English law. That division of the people which comprehends all persons in holy orders, (*infra sacros ordines*.) and in ecclesiastical offices, as distinguished from the *laity*. 1 *Bl. Com. 376. 3 Steph. Com. 55. See Orders.*

In old English law. That peculiar privilege (*L. Lat. clerimonia*.) anciently enjoyed by the clergy, otherwise called benefit of clergy. See *Benefit of clergy.* To *pray clergy* was to claim this privilege, by praying to have a book, so that the prisoner could show that he could read as a clerk, which was the test established. *Termes de la Ley. 4 Bl. Com. 364, et seq. Dyer, 205. 1 Salk. 61. 2 Show. 386. See Burning in the hand.*

The delivery of a clerk to the ordinary, to be kept in prison. *Finch's Law, b. 4, ch. 45.*

CLERGYABLE. In old English law. Admitting of clergy, or benefit of clergy. A clergyable felony was one of that class in which clergy was allowable. 4 *Bl. Com. 371—373.*

CLERICAL ERROR. [*L. Lat. vitium clerici.*] A mistake in writing or copying; the mistake of a clerk, or writer. 1 *Ld. Raym. 183.*

CLERICAL TONSURE. The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 *Bl. Com. 24, note (t). 4 Id. 367.*

CLERICAL PRIVILEGIUM. L. Lat. In old English law. The clerical privilege; the privilege or benefit of clergy. *Fleta, lib. 1, c. 28, § 12. Id. lib. 2, c. 69. See Benefit of clergy.*

CLERICI. L. Lat. [*plur. of clericus.*] Clerks; clergymen. See *Clericus.*

CLERICI DE CANCELLARIA. L. Lat. Clerks of the chancery. *Stat. Westm. 2, c. 24.*

CLERICI DE PRIMA FORMA, or DE PRIMO GRADU. L. Lat. Clerks of the first form or rank. The chief clerks of chancery, who acted as the chancellor's assistants, (*collaterales et socii cancellarii*.) in the framing of writs *in consimili casu*; and were afterwards termed masters in chancery. *Crabb's Hist. Eng. Law, 547, 184. 2 Reeves' Hist. Eng. Law, 250, 251.*

Treatise of the Maisters of the Chauncery, II. Called *clerici primi gradus*. *Rot. Claus.* 35 Edw. III. and 43, in dora. Called *clerici de majori gradu*, in *Codington's patent*, 49 Edw. III.

CLERICI DE SECUNDA FORMA. L. Lat. Clerks of the second form, or grade. Clerks of the second rank in chancery, called in the statute of Westminster 2, clerks of course, (*clerici de cursu*,) and afterwards cursitors, (*cursitores*,) whose business was to make out the common writs or writs of course, (*de cursu*). *Crabb's Hist. Eng. Law*, 547. See *Cursitor*.

These phrases of *prima*, *secunda* and *tertia forma* were derived from the civil law. *Cod.* 12. 24. 7. *Id.* 12. 26. 1.

CLERICI PRÆNOTARIIL L. Lat. The six clerks in chancery. 2 *Reeves' Hist. Eng. Law*, 251. Fleta calls them *sex clerici prænотarii*. Lib. 2, c. 13, § 15. See *Id.* c. 36. See *Six clerks*.

CLERICK. An old form of *clerk*, closely following the Lat. *clericus*. 2 *Show*, 386, arg.

CLERICO ADMITTENDO. See *De clerico admittendo*.

CLERICO CAPTO PER STATUTUM MERCATORUM, &c. See *De clerico capto, &c.*

CLERICO CONVICTO, COMMISSO GAOLÆ, &c. See *De clerico convicto, &c.*

CLERICO INFRA SACROS ORDINES CONSTITUTO, &c. See *De clerico infra sacros, &c.*

CLERICUS. Lat. [Gr. κληρικος.] In the Roman law. A minister of religion in the Christian church; an ecclesiastic or priest. *Cod.* 1. 3. *Nov.* 3, 123, 137. A general term, including bishops, priests, deacons, and others of inferior order. *Brissonius*. In the Code of Justinian, however, (*ub. sup.*) bishops (*episcopi*) are named distinctly from *clerici*.

In feudal law, the term occurs in the same sense. *Feud. Lib.* 2, tit. 35.

CLERICUS. L. Lat. In old English law. A clergyman, a clerk, or priest; a person in holy orders. *Fleta*, lib. 2, c. 28, § 12. *Id.* c. 69. *Legit ut clericus*; he reads as a clerk. *Dyer*, 205. See *Clerk*. *Nullus clericus nisi causidicus*; there is no clerk that is not an advocate. *Will. Malmsh. de Gest. Reg.* lib. 4, cited 1 *Bl. Com.* 17.

A secular priest, as distinguished from a religious or regular. *Kennett's Par. Ant.* 171. *Cowell*.

A clerk or person who used his pen in

any courts or otherwise. See *Clerk*. A clerk of court; an officer whose duties were to issue writs, enrol pleas, &c. *Fleta*, lib. 2, c. 36.

An officer of the royal household, having charge of the receipt and payment of moneys, &c. *Fleta* enumerates several of them, with their appropriate duties; as *clericus coquina*, clerk of the kitchen; *clericus panetr' et butelr'*, clerk of the pantry and buttery. Lib. 2, c. 18, 19.

CLERICUS MERCATI. L. Lat. In old English law. Clerk of the market. *Fleta*, lib. 2, c. 8. 2 *Inst.* 543.

CLERICUS PAROCHIALIS. L. Lat. In old English law. A parish clerk. *Towns. Pl.* 213. Otherwise called *clericus sacerdotis*, the priest's clerk. *Cowell*.

CLERICUS ET CUSTOS ROTULORUM. L. Lat. In old English law. Clerk and keeper of the rolls; otherwise called *clericus parvæ bagæ, et custos rotulorum, et domus conversorum*; clerk of the petty bag, and keeper of the rolls, and of the house of the converts. Ancient titles of the *Master of the Rolls*. 3 *Reeves' Hist. Eng. Law*, 154.

CLERIGOS. Span. [from Lat. *clericus*, q. v.] In Spanish law. Clergy; men chosen for the service of God. *White's New Recop.* b. 1, tit. 5, ch. 4.

CLERIMONIA. L. Lat. [from *clerus*, q. v.] In old English law. Clergy, or privilege of clergy. 2 *Inst.* 635.

CLERK. [L. Lat. *clericus*; L. Fr. *cler*; Span. *clerigo*; O. Eng. *clerick*.] In English ecclesiastical law. A priest or clergyman; a person in orders. When a person has been ordained a priest, he is, in the language of the law, a *clerk in orders*. 1 *Bl. Com.* 388. A person presented to a benefice or living is technically called a *clerk*. *Id. ibid. et seq.*

In general law and practice. An officer of a court, who keeps its minutes or records its proceedings, and has the custody of its records and seal. Sometimes called a *prothonotary*, (q. v.) See *Clerkship*.

* * * This latter meaning of the term *clerk*, which is the prevalent one in modern law, though itself of considerable antiquity, seems to have entirely grown out of the primitive signification of *ecclesiastic*. *Selden's Diss. ad Fletam*, ch. 9, sect. 3. Among other branches of learning formerly exclusively confined to the clergy were the (now ordinary) accomplishments of reading and writing. The ability to read, as we have seen, was at first so entirely

peculiar to that body, that for a convict to be able to read (though never in holy orders,) was, of itself, sufficient to entitle him to the privilege of clergy. 4 *Bl. Com.* 367. The mere certificate of the ordinary or his deputy, *legit ut clericus*, (he reads as a clerk, like one of the clergy,) procured his immediate discharge from the temporal court. See *Benefit of clergy, Clericus*. The still rarer accomplishment of *writing* was so far engrossed by the clergy as, in the course of time, to obtain for any person who *habitually used his pen*, in any employment, the appellation of "*a clerk*," (*clericus*); and this circumstance, in addition to the fact that the judges of courts were formerly usually created out of the sacred order, and that all the inferior offices were supplied by the lower clergy, sufficiently accounts for the application of the term *clerk* (once peculiar to the clergy) to those officers of courts whose principal function was to *use their pen* in recording the proceedings. *Termes de la Ley*. 1 *Bl. Com.* 17. *Selden's Diss. ad Fletam*, ch. 9, sec. 3.

CLERKSHIP. In practice. The period during which a person is required to serve in the office of a practising attorney or solicitor, in order to qualify himself to practice as an attorney or solicitor. The person so serving is properly termed a *clerk*, and in England, (from the circumstance of his being bound by written articles) an *articled clerk*. 1 *Tidd's Pr.* 61—70. 1 *Archb. Pr.* 14—18 *Arch. New Pr.* 105. *Stat. 6 & 7 Vict.* c. 73.

In old English practice. The art of drawing pleadings and entering them on record in Latin, in the ancient court hand; otherwise called "skill of pleading in actions at the common law." *Towns. Pl.* 1—5, 12—25, *et passim*. Clerkship, in the court of Common Pleas, was formerly a distinct profession of itself. *Id.* 2. See *Court hand, Law Latin*.

CLERONIMUS. L. Lat. In old records. An heir. 3 *Mon. Angl.* 129. *Whishaw*.

CLERUS. L. Lat. or Græco-Lat. [from Gr. κληρος, a lot or patrimony.] In old English law. The clergy. *Ad specialem requisitionem prelatorum et cleri regni*; at the special request of the prelates and clergy of the realm. *Reg. Orig.* 289 b. *Articuli cleri*; articles of the clergy. See *Articuli cleri*.

CLEYMER. L. Fr. To claim. *Fet Assaver*, § 21.

CLICUS. A contraction of *clericus*, in old pleadings and records. 1 *Instr. Cler.* 9.

CLIENS. Lat. In the Roman law. A client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties; and was bound in return, to pay him all respect and honor, and to serve him with his life and fortune in any extremity. *Dionys. ii.* 10. *Adam's Rom. Ant.* 33.

CLIENT. [from Lat. *cliens*.] A person who employs or retains an attorney, solicitor, proctor or counsellor, to appear for him in courts; advise, assist and defend him in legal proceedings; and to act for him in any legal business.

Client is entirely a relative term, and is obviously derived from the Lat. *cliens*, (q. v.) It seems to be essentially a French word, and is thus used by Britton: *Et come ascun soit issi fait attorne, mes ne se p'ra repenter pendaunt la p'ole, sauns la volunte son client*; and where one has been thus made an attorney, he may not afterwards repent or withdraw during the plea, without the consent of his client. *Britt.* c. 126.

CLIENTELA. Lat. [from *cliens*, q. v.] In old English law. The state of a client; clientship; protection; patronage; guardianship. Applied to the relation of a church to its patron. 2 *Bl. Com.* 21.

CLITO. L. Lat. [from Gr. κλυτος, illustrious.] In Saxon law. The son of a king, or emperor. The next heir to the throne; the Saxon Adeling. *Spelman*, vocc. *Clito*, *Adelingus*.

CLOS. L. Fr. Shut up. *Si les bestes soient clos dedens mason*; if the beasts be shut up within a house. *Britt.* c. 27.

Close; closed. *Brefe clos*; a writ close. *Id.* c. 73.

A close. *Yearb. M.* 3 Hen. VI. 14.

CLOSE. [Lat. *clausum*; L. Fr. *clos*, qq. v.] A portion of land, as a field, enclosed, as by a hedge, fence or other visible enclosure.* 3 *Bl. Com.* 209.—A piece of land adjoining a house. 1 *Leon.* 103. 3 *Bl. Com.* 209.

The interest of a person in any particular piece of ground, whether actually enclosed or not. 7 *East*, 207. *Doct. & Stud. dial.* 1, c. 8.

* * * Every man's land is, in the eye of the law, *enclosed* and set apart from his neighbor's; and that either by a *visible* and material fence, as one field is divided from another by a hedge; or by an *ideal* invisible boundary, existing only in the contem-

plation of law, as when one man's land adjoins to another's in the same field. 3 *Bl. Com.* 209, 210. In common acceptance, *close* means an enclosed field; but in law it rather signifies the separate interest of the party in a particular spot of land, whether enclosed or not. 7 *East*, 207. *Doct. & Stud.* dial. 1, c. 8.

The idea of a *close*, as a piece of land adjoining and enclosing a dwelling-house, and peculiarly privileged from entry or invasion, is of very great antiquity in European law, and is clearly traced by Montesquieu to the habits of the ancient Germans, of whom it is said by Tacitus,—*Suam quisque domum spatio circumdat*; every one surrounds his house with a space of ground. *De Mor. Germ.* c. 16. Montesquieu translates this passage "*chacun laisse autour de sa maison un petit terrien ou space, qu'est clos et fermé*," and refers to some of the laws of the barbarian codes (as the law of the Allemans, c. 10, and the law of the Bavarians, tit. 10, §§ 1, 2;) as containing decrees against those who threw down this enclosure, as well as against those who broke into the house. *Espiril de Lois*, liv. 18, c. 22. This enclosure was called *curtis* (a court) in the ancient charters. See *Court, Curtis*.

CLOSE. [L. Fr. *clos*; L. Lat. *clausum, clausum, clausi, clausa*.] In practice. Close or sealed up. A term applied to writs and letters, as distinguished from those that are open or patent, (*patentes*). See *Clausum, Close writs*.

CLOSE (or CLAUSE) WRITS, or WRITS CLOSE. [L. Lat. *brevia clausa*.] In English practice. Writs directed to the sheriff, as distinguished from those which were directed to the lord, which were called patent. 3 *Reeves' Hist. Eng. Law*, 45. This distinction prevailed in writs of rights, some being patent, and others close. *F. N. B.* 1 F. *Id.* 11 F. *Cro. Eliz.* 158. The term *close* (writ close) is still occasionally applied to writs, and is derived from the circumstance of the writ being *close* folded up, with the wax round it; being thus distinguished from a writ *patent*, which, although folded up, is sealed at the end of the label which issues from the same piece of parchment, and surrounds the writ. *Sewell's Law of Sheriff*, 372.

Letters of the king, sealed with his great seal, directed to particular persons, and for particular purposes, which, not be-

ing proper for public inspection, are *close* up and sealed on the outside, and are therefore called *writs close*, (*literæ clausæ*), and are recorded in the *close rolls*, in the same manner as writs or letters patent are in the *patent rolls*. 2 *Bl. Com.* 346.

* * The terms *writ* and *letter*, or *letters*, appear to have anciently been synonymous. Writs were, in England, from the earliest period, framed in the style of letters or epistles, and are frequently described as such. See *Breve, Epistola, Litteræ, Writ*. Letters of attorney, on the other hand, were frequently termed *writs*. *Bract* fol. 40. The ancient justices in eyre acted under the authority of writs or commissions directed to them. Where there were several, each justice had a writ specially directed to himself, called *breve clausum*, a close writ. Besides this, there was a writ directed to all of them jointly, called *breve patens*, a writ patent, which was publicly read at the opening of the eyre, as their warrant for holding the court. *Bract* fol. 108, 109, *et seq.* *Id.* fol. 115 b.

CLOSE or CLAUSE ROLLS. [L. Lat. *rotuli clausi*.] Rolls preserved among the public records in England, containing the records of the writs or letters close, and other documents. 2 *Bl. Com.* 346. *Hubback's Evid. of Succession*, 619.

* * Mr. Hubback observes that these close or "*clause*" rolls contain many important documents relative to the prerogatives of the crown, and other matters of a very miscellaneous nature. Among their contents, he enumerates writs of summons to parliament, and for the expenses of knights, citizens and burgesses, proclamations, enrollments of deeds between party and party, liveries and seisins of land, with a great variety of instruments, too numerous to be recounted. Like the patent rolls, some of them are deposited in the Tower, and some at the Rolls' Chapel. The former comprise those from their earliest existing date, 6 John, A. D. 1204, to the end of the reign of Edward IV. The latter, beginning with Edward V. are continued down to a recent period. *Hubback's Evid. of Succession*, 619, 620.

CLOSE COPIES. In old English practice. Copies of papers which might be written as close as the writer pleased; as distinguished from *office copies*, which were required to contain a certain determinate number of words in a sheet. 2 *Burr.* 1177—1181. 1 *W. Bl.* 288, S. C.

CLOUGH. A valley. *Domesday*.

An allowance for the turn of the scale, on buying goods wholesale by weight. *Whishaw*.

CO. L. Fr. This. An old form of *ceo*. *Co est à savier*; this is to wit. *LL. Gul. Cong.* l. 1, pr.

CO. A prefix to words, denoting conjunction of action, or of right, power or duty; as in the words *co-administrator*, *co-executor*, *co-trustee*, and others.

COADJUTOR. Lat. [from *coadjuvare*, to help or aid.] A fellow-helper; one who aids or assists another (*qui auxiliatur alteri*.) *Co. Litt.* 181 a. Applied by Littleton to one who assists another in a disseisin. *Litt.* sect. 278.

COADUNARE. L. Lat. [from *con*, together, *ad*, to, and *una*, together.] To get together; to heap up, as hay, manure, &c. *Fleta*, lib. 2, c. 76, § 1. *Id.* c. 81, § 1.

COADUNATIO. L. Lat. [from *coadunare*, q. v.] In old English law. A uniting of persons together; a combination or conspiracy. 9 *Co.* 56.

COALITION. A combination or union of persons. Used in French law to denote the offence of conspiracy, (q. v.) *Bouvier*.

COARCTARE, *Coartare*. Lat. [from *con*, together, and *arctus*, close.] In old English law. To straiten; to restrain, narrow, limit or confine. Bracton and Fleta use *coarctari* as the opposite of *ampliari*. *Bract.* fol. 17 b. *Coarctata*; limited or restrained.

COARCTATIO. Lat. [from *coarctare*, q. v.] A restriction or limitation. *Bract.* fol. 22 b. *Fleta*, lib. 4, c. 19, § 8.

COAST. [from Fr. *coste*, a side.] The edge or margin of land next to the sea; the sea-shore. See 1 *Kent's Com.* 29—31.

COCKET, *Cocquet*, *Coquet*. [L. Lat. *cockettum*, from *quo quietus*, see *infra*.] In English law. A seal belonging to the custom-house. *Reg. Orig.* 192. *Pars sigilli quod dicitur cocket*. *Id. ibid.* 3 *Salk.* 172.

A scroll or piece of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandizes are customed. *Stat.* 11 *Hen.* VI. c. 16.—A testimonial that the customs outward, due to the king, are paid. *Hale de Jur. Mar.* pars 2 (de port. maris,) c. 11. Anciently called *literæ de cocketto*, or *literæ testimoniales de cocketto*. *Reg. Orig.* 279. *Cowell. Blount. Spelman*, voc. *Cockettum*.

The form of the *cocquet* anciently ran in

the king's name, as follows: *Edwardus, &c. Omnibus ad quos, &c. salutem. Sciatis quod J. S. nobis solvit in portu nostro London, custumas nobis debitas pro tribus saccis lanæ, quo quietus est. Testibus collectore et contrarolatore customarum nostrarum, in portu prædicto, die, anno, &c. Edward, &c. To all to whom, &c. Greeting: Know ye, that J. S. hath paid to us, in our port of London, the customs due to us for three sacks of wool, whereby he is quit (or discharged). Witness, the collector and controller of our customs in the port aforesaid, the day and year, &c. Hale de Jur. Mar. ubi supra.*

COCKETTARE. L. Lat. [from *cockettum*.] In old English law. To cocket. *Cockettari*; to be cocketted, that is, furnished with a cocket, or certificate that goods are customed. *Reg. Orig.* 279. *Lanæ ponderatæ et cockettatæ*,—*customatæ et cockettatæ*; wools weighed and cocketted, —customed and cocketted. *Id. ibid.*

COCTILIS. L. Lat. Built of brick. *Murus coctilis*; a brick wall. *Dyer*, 108.

CODE. [Lat. *codex*.] A body of laws; a collection or compilation of laws, by public authority.*

A code may be either a mere compilation of existing laws, (though this is more properly a *digest*), or a new system of laws founded on new fundamental principles. *P. Cyclopædia*.

* * The term *code* is of Roman origin, and was first applied, in its proper sense, to the collection of imperial constitutions made by the emperor Theodosius the younger. See *Code of Theodosius*. It is unknown to the common law of England, but frequently occurs in the jurisprudence of those nations who have adopted the method of the civil law, especially in France, since the period of the revolution. In the United States, with the exception of Louisiana, the term has not hitherto been in use. Of late years, however, it appears to be rapidly coming into favor.

CODE CIVIL. A code of law prepared under the direction of Napoleon, and promulgated in 1804, as the civil law of France, (*Code Civil des Français*). Under the Empire, its name was changed to that of *Code Napoleon*, by which it is still often designated, though it has now officially resumed its original title of *Code Civil*. In its general arrangement and distribution, it resembles the Institutes of Justinian. It consists of three books, divided into titles

or heads, each of which is subdivided into chapters and sections. *P. Cyclopædia*.

CODE OF JUSTINIAN. [Lat. *Codex Justinianus*.] A collection of imperial constitutions in twelve books, compiled by Tribonian and nine associates, under the direction of Justinian, A. D. 529; and so called to distinguish it from the code of Theodosius, (q. v.) published about a century before. This code was the first of the four collections of law which make up the *Corpus Juris Civilis*, (q. v.) A new edition, called *Codex repetitæ prælectionis*, was published by Justinian, A. D. 534. 1 *Bl. Com.* 81. *Inst.* præf. § 2. *Cooper's notes*, in loc. 1 *Kent's Com.* 537. 1 *Mackeld. Civ. Law*, 51, § 61; 57, § 69; 92, § 101. The old code, called *Codex Vetus*, is now lost. *Id.* 51, § 61.

The code is sometimes cited thus:—Const. 22, C. 4. 35—that is, the 22d constitution, Code, book 4, tit. 35. Sometimes more simply:—*Cod.* 4. 35. 22.

CODE OF THEODOSIUS, more properly and usually called **THEODOSIAN CODE**. [Lat. *Codex Theodosianus*.] A code compiled by the emperor Theodosius the younger, A. D. 438, (or 435, according to Selden,) being a methodical collection, in sixteen books, of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being, during that interval, confined to the East. 1 *Bl. Com.* 81. *Selden's Diss. ad Flet.* c. 5, sect. 2; c. 6, sect. 1. *Taylor's Civ. Law*, 17. *Butler's Hor. Jur.* 54, 55.

CODE NAPOLEON. See *Code civil*.

CODEX. Lat. A code or collection of laws; particularly the code of Justinian. The Code and Digest appear to be more frequently referred to by the old English law writers, than the other parts of the civil law. Bracton introduces them both in an illustration of a consideration. *Do tibi digestum, ut des mihi codicem*; I give you a Digest, that you may give [in consideration of your giving] me a Code. *Do tibi codicem, ut facias mihi scribi digestum*; I give you a Code, that you may have a copy made for me of a Digest. *Bract.* fol. 19.

A book or manuscript; a writing on paper, parchment, tablets or other materials, folded like modern books, with a number

of distinct leaves one above another. *Adam's Rom. Ant.* 560.

A copy or counterpart of a written instrument, as a will. *Inst.* 2. 10. 13.

CODEX GREGORIANUS. A collection of imperial constitutions made by *Gregorius*, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. 1 *Mackeld. Civ. Law*, 44, § 54.

CODEX HERMOGENIANUS. A collection of imperial constitutions made by *Hermogenes*, a jurist of the fifth century. It was nothing more than a supplement to the *Codex Gregorianus*, (*supra*), containing the constitutions of Diocletian and Maximian. 1 *Mackeld. Civ. Law*, 44, § 54.

Mr. Long contends that the proper names of these jurists are *Gregorianus* and *Hermogenianus*, instead of *Gregorius* and *Hermogenes*. *Long's Discourses*, 80. But Selden and other eminent writers make constant use of the latter names, without objection. Taylor uses both. *Civ. Law*, 17. According to Selden, *Gregorius* and *Hermogenes* were heathen civilians who lived in the time of the Constantines, and fearing lest by the new constitutions of the Christian princes, the heathen jurisprudence should be lost, they applied themselves to the compiling their codes, in which they united together the laws of the heathen emperors from Hadrian down to Diocletian, in order as much as possible to preserve the ancient. But all that remains of these two codes are some fragments which Cujacius has placed at the end of the Theodosian code. *Seld. Diss. ad. Flet.* c. 5, sec. 2, p. 78, note.

CODEX JUSTINIANEUS. The code of Justinian; so called by Justinian himself. *Const. Cordi nobis, de emendat. Cod.* § 5, cited 1 *Mackeld. Civ. Law*, 51, § 61, note (c).

CODEX REPETITÆ PRÆLECTIONIS. The new code of Justinian; or the new edition of the first or old code, promulgated A. D. 534, being the one now extant. 1 *Mackeld. Civ. Law*, 57, § 69. *Taylor's Civ. Law*, 22. See *Code of Justinian*.

CODEX THEODOSIANUS. The code of Theodosius. See *Code of Theodosius*.

CODEX VETUS. The old code. The first edition of the code of Justinian; now lost. 1 *Mackeld. Civ. Law*, 51, § 61.

CODICIL. [Lat. *codicillus*, q. v.] A supplement to a will, or an addition made

by the testator, and annexed to, and to be taken as part of a testament, by which its dispositions are explained, added to, or altered.* 2 *Bl. Com.* 500. 4 *Kent's Com.* 531. 1 *Steph. Com.* 545.—A testamentary disposition subsequent to a will, and by which the will is altered, explained, added to, subtracted from, or confirmed by way of republication, but in no case totally revoked. 2 *Wooddes. Lect.* 284. De Grey, C. J. 3 *Wils.* 513. For general purposes, a codicil is considered as a will, the distinction between them existing only in their relation to each other. 1 *Powell on Devises*, 20, note (4). 1 *Steph. Com.* 545. By the English Statute of Wills, 7 *Will.* IV. and 1 *Vict. c.* 26, the term *will* is to be taken as including a *codicil*. And the rule is the same in the state of New-York. 2 *Rev. Stat.* [68, § 71,] 12, § 78. So that a codicil must be executed with the same formalities, and proved in the same manner as the will itself. 4 *Kent's Com.* 531. See 7 *Hill's (N. Y.) Rep.* 346. 12 *Gill & Johns.* 288. 14 *B. Monroe's R.* 333. *United States Digest*, Will.

* * The name, and, to some extent, the modern use of a codicil, are taken from the *codicillus* of the Roman law, which, however, was, in many respects, a very different instrument. See *Codicillus*. Two definitions of the term are given in the old dictionaries. The last in order is substantially the modern definition, but the first, and apparently the preferred one, is in the following words: "A codicil is the will or testament of a man, concerning that which he would have done after his death, without the appointing of an executor." *Termes de la Ley*. "A codicil is the same with a testament, but that it is without an executor." *Cowell. Blount*. This definition seems to be modelled after the idea of a *codicillus* in the Roman law, which was merely an informal, and subordinate, but distinct and independent species of will. See *Codicillus*. Its peculiar feature, however, is that which denies to a codicil the appointment of an executor. Dr. Wooddeson observes on this point, as if in explanation of this peculiarity, that codicils were never thought to require the appointment of a new executor to carry them into execution. 2 *Wooddes. Lect.* 284. In this view, no doubt, we may still say with propriety that a codicil is "without the appointment of an executor." But that the old definition signified something more is obvious from

the language of Swinburne, who expressly lays down the position that a codicil does not admit the appointment of an executor, and bases upon that circumstance the peculiar and principal distinction between it and a will. *Swinburne on Wills*, part 1, § 5, n. 3, p. 13. It is hardly necessary to say that this doctrine of Swinburne's is not now law. 2 *Wooddes. Lect. ub. sup.*

CODICILLUS. Lat. [a little book, dimin. of *codex*, a book.] In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans. Its peculiarities were, that it required no solemnity in its execution, (*nullam solemnitatem ordinationis desiderant*;) that an inheritance could neither be given nor taken away by it, except through a trust; and that it might be made before as well as after a testament. *Inst.* 2. 25. 1, 2, 3. In all these particulars, but especially the last, this instrument was the very opposite of the modern codicil. *Supra*. Indeed, by the express declaration of Justinian, the law of wills and that of codicils were established upon entirely different foundations, (*ne confundatur jus testamentorum et codicillorum.*) *Inst.* 2. 25. 2.

The expression *nullam solemnitatem* in the Institutes (*supra*) is not generally understood literally to mean that no solemnity whatever was required in the execution of a codicil; but only that a less degree of solemnity was necessary than in case of a will. *Cooper's Justinian*, Notes in loc. And see *Dig.* 29. 7. *Cod.* 6. 36.

COE. A contraction of *commune*. *Co'er*; a commoner. *Les co'es*; the commons. *Kelham*.

COE. A corruption of *ceo*, (this) constantly occurring in the tract called *Fet Assaver*, (q. v. *passim*).

COEMPTIO. Lat. Mutual purchase. One of the modes in which marriage was contracted among the Romans. The man and the woman delivered to each other a small piece of money. The man asked the woman, *An sibi materfamilias esse vellet*, whether she would become to him a *materfamilias* (mistress of his family); to which she replied that she would, (*se velle*). In her turn, she asked the man whether he would become to her a *paterfamilias*, (master of a family). On his replying in the affirmative, she delivered her piece of money and herself into his hands, and so became his wife. *Adam's Rom. Ant.* 501.

Cooper's Justinian, Notes, *421. * *Taylor's Civ. Law*, 280, 281.

COERCION. [L. Lat. *cohercio.*] Constraint; compulsion. See *Duress*.

Cogitationis penam nemo patitur. No man suffers the punishment of thought; no man is subjected to punishment for his thoughts. *Dig.* 48. 19. 18. So long as an act rests in bare intention, it is not punishable by law. *Broom's Max.* [228.]

COGNATES. [Lat. *cognati.*] Relations by the mother's side, or by females. 1 *Mackeld. Civ. Law*, 137, note. A common term in Scotch law. *Ersk. Inst.* b. 1, tit. 7, § 4. *Bell's Dict.*

COGNATI. Lat. In the civil law. Cognates; relations by the mother's side. 2 *Bl. Com.* 235. Relations in the line of the mother. *Hale's Hist. Com. Law*, c. xi. Relations by, or through females; (*qui per feminini sexus personas cognitione junguntur.*) *Inst.* 1. 15. 1. *Id.* 3. 5. A man's cognates are his mother, grandmother, (mother's mother,) mother's brother, mother's sister, sister's son, &c. 1 *Mackeld. Civ. Law*, 137, note.

Relations generally; properly, by blood; persons of the same blood; (from *con*, together, and *nati*, born;) as though born together, (*una communiterve nati*, Gr. *συγγενεῖς*) or sprung from one and the same source, (*ex uno nati*; *ab eodem orti*). *Dig.* 38. 8. 1. 1. *Id.* 38. 10. 4. 1. *Id.* 38. 10. 10. 1.

COGNATIO. Lat. In the civil law. Cognation. Relationship, or kindred generally. *Dig.* 38. 10. 4. 2. *Inst.* 3. 6. pr. *Bract.* fol. 67. *Fleta*, lib. 6, c. 2.

Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit*, *cognatio a matre.* *Inst.* 3. 5. 4.

* * The use of this word, (like that of *cognati*,) sometimes in one of these senses, and sometimes in the other, as it occurs in the civil law often in the same paragraph, renders a correct translation a matter of some difficulty. Thus, in the following passages: *Sunt autem agnati cognati per virilis sexus cognitionem conjuncti, quasi a patre cognati.*—*At qui per feminini sexus personas cognitione junguntur, agnati non sunt, sed alias naturali jure cognati.* *Inst.* 1. 15. 1. Here both *cognati* and *cognatio* are used in their general sense, in explaining *agnati*, and the passages may be translated thus: "*Agnates* are relations (*cognati*) united by a relationship (*per cognitionem*),

of the male sex, as though related (*cognati*, born together, having a common origin) from (by, or on the part of) the father.—But those who are united in relationship (*cognitione*) through persons of the female sex, are not *agnati*, but otherwise related by a natural tie." Here, the meaning of *cognati* begins to change from general to particular, or to the technical meaning which was given to it in contrast with that of *agnati*. And this is fully brought out in the sentence which immediately follows: "*Itaque amittæ tuæ filius, non est tibi agnatus, sed cognatus, &c.*" Therefore the son of your paternal aunt is not an *agnate* to you, but a *cognate*." See also *Inst.* 3. 5. 4. On the other hand, *cognatio* is used in the general sense of relationship throughout the sixth title of the third book of the *Institutes*. *Agnatio* is called by Justinian a technical term of law, (*agnatio juris civilis nomen est*,) and was so distinguished from *cognatio*, which rests on the broader basis of natural law. *Inst.* 1. 15. 3. See *Agnatio*. So, *cognatus* is called in the *Digests* a natural term (*nomen naturale*); and the same passage, quoting Paulus, explains *cognatus* and *agnatus* (or *adgnatus*) to differ as genus and species. Every *agnatus* was a *cognatus*, but not *e converso*. *Dig.* 38. 10. 4. And see Taylor's explanation. *Civil Law*, 314.

COGNATIO. Lat. In the canon law. Consanguinity, as distinguished from affinity. 4 *Reeves' Hist. Eng. Law*, 56—58.

Consanguinity, as including affinity. *Id.* *ibid.*

COGNATIO. Lat. In the common law. Cousenage, or cosinage. See *Cosinage*.

COGNATUS. Lat. In the civil law. A relation by the mother's side; a cognate.

A relation, or kinsman, generally. See *Cognati*, *Cognatio*.

COGNISANCE, Cognizance, Conusance. [L. Lat. *cognitio*, q. v.] In practice. Acknowledgment or recognition of right. That part of a fine in which the defendant acknowledged that the land in question was the right of the complainant. 2 *Bl. Com.* 350. From this the fine itself derived its name, as being *sur cognizance de droit*, &c., and the parties their titles of *cognizor* and *cognizee*. *Id.* 351—353.

Acknowledgment, confession or admission. The name of an answer made by a defendant in an action of replevin, where he has acted as bailiff to another in making a

distress, by which he *acknowledges* the taking, but insists that such taking was legal, as he acted by the command of one who had a right to distrain. 3 *Bl. Com.* 149. See *Cognoscere*.

Judicial notice, or examination; the hearing of a matter judicially. As, "to take cognizance of a cause." *Cowell. Blount.*

Jurisdiction of a court over a cause, usually of an exclusive character. Cognisance (or rather *conusance*) of pleas in English law is a privilege or franchise granted to a city, town or corporation, and sometimes to an individual, to hold pleas, (i. e. to hold courts and hear causes,) within the precinct of the franchise. *Termes de la Ley*, voc. *Conusance*. See *To hold pleas*. And it involves the power of calling a cause or plea out of another court in which it has already been commenced. *Id. Cowell.* 2 *Arch. Pract.* 191. The claim of conusance very seldom occurs in practice, and the few modern instances to be found in the books are of claims of the universities of Oxford and Cambridge. *Arch. N. Pract.* 234.

COGNITIO. Lat. [from *cognoscere*, to know, to understand, to hear, to acknowledge, to confess.] In old English law. The acknowledgment of a fine; the certificate of such acknowledgment. *Potestas recipiendi cognitiones*; the power of taking acknowledgments. *Reg. Orig.* 168 b. *De cognitionibus certificare*; to certify (give a certificate) of acknowledgments. *Id. ibid.*

Cognizance, or jurisdiction. *Hujusmodi cause cognitio ad forum spectat ecclesiasticum*; the cognizance of this kind of cause belongs to the ecclesiastical tribunal. *Bract.* fol. 302 b. *Artic. Cleri*, c. 6. *Cognitio placitorum*; cognizance of pleas. 10 *Mod.* 126.

COGNITIO. Lat. In the Roman law. The judicial examination or hearing of a cause. *Plin. Epist.* vii. 33. How the *cognitiones* before the emperor were conducted, see *Dig.* 28. 4. 3. The term was adopted in feudal law. *Feud. Lib.* 2, tit. 1.

COGNITIONIS CAUSÆ. Lat. (For the purpose of ascertaining.) In Scotch practice. A name given to a judgment or decree pronounced by a court, ascertaining the amount of a debt against the estate of a deceased landed proprietor, on cause shown, or after a due investigation. *Bell's Dict.*

COGNITOR. L. Lat. [from *cognoscere*, to acknowledge.] In old English law.

One who acknowledges; a cognizor, or conusor. See *Cognizor*.

COGNITOR. Lat. In the Roman law. An advocate or defender in a private cause; one who defended the cause of a person who was present. *Brissonius. Calv. Lex.*

COGNIZATUS. L. Lat. [from *cognoscere*, to acknowledge.] In old English law. One to whom an acknowledgment is made; a cognizee, or conusee. See *Cognizee*.

COGNIZOR, Conusor. [L. Lat. *cognitor*.] In old conveyancing. The party levying a fine. 2 *Bl. Com.* 350, 351. The party defendant in the proceedings, who acknowledged the other party's right to the land in question.*

COGNIZEE, Conusee. [L. Lat. *cognizatus*.] The party to whom a fine was levied. 2 *Bl. Com.* 351. The party plaintiff in the proceedings, to whom the other party's acknowledgment of his right to the land in question was made.*

COGNOMEN. Lat. In the Roman law. The last of the three names by which all Romans, at least those of good family, were designated. The first, or *prænomen*, served to denote the individual; the second, or *nomen*, the clan or *gens*, and the third, or *cognomen*, the house or *familia* to which he belonged. *Inst.* 2. 20. 29. *Adam's Rom. Ant.* 35. *Dig.* 28. 2. 1. *Brande*. There was sometimes a fourth name, termed *agnomen*, (q. v.) *Inst. ub. sup. Butler's Hor. Jur.* 28.

In English law. A surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family. Some of the earliest English surnames were formed (as in much earlier times) by taking the father's name, and prefixing the word *filius* or *fitz*, (son). *Fleta* mentions *filius Willielmi*, (the son of William, or Fitz William,) and *filius Petri*, (the son of Peter, or Fitz Peter,) as examples of the *cognomen* of that period. *Fleta*, lib. 4, c. 10, § 7. Sometimes the word *filius* was merely understood, as *Hughbertus Roberti*, *Hughbertus Walteri*. *Bract.* fol. 188 b. *Cognomen majorem est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum, ab eventu*; a cognomen or surname is derived from the blood of one's ancestors, this is intrinsic; an agnomen is extrinsic, (or of foreign origin,) being derived from some event. 6 *Co.* 65.

COGNOSCE. [from Lat. *cognoscere*, to know.] In Scotch practice. To examine; to inquire into. "Brieves for cognoscing an

idiot or furious person." *Bell's Dict. voc. Idiots*. See 6 *Bell's Appeal Cases*, 241.

COGNOSCERE. Lat. In the civil law. To hear a cause. *Brissonius. Calv. Lex.*

COGNOSCERE. Lat. In old practice. To acknowledge. *Bene cognoscit captionem*; he well acknowledges the taking. 1 *Salk.* 3, pl. 8. *Cognovit*; he has acknowledged. See *infra. Bene cognosco*; I well acknowledge. *Fleta*, lib. 5, c. 6, § 47.

COGNOVIT ACTIONEM. L. Lat. (He hath acknowledged the action); sometimes simply termed a COGNOVIT. In practice. A written confession of an action at law, signed by the defendant, or his attorney, given to the plaintiff after receiving his declaration, and before plea. In substance, it acknowledges the demand to be just, and authorizes the plaintiff to enter judgment for a sum named, either absolutely, or upon specified conditions.* 1 *Tidd's Pr.* 559. Where it is given after plea pleaded, it is usually termed a *relicta*, or *relicta* and *cognovit*. *Id. ibid.* See *Relicta*.

COHABIT. [from Lat. *cohabitare*, q. v.] To live together as husband and wife; to live together at bed and board. *Burr. Settl. Cases*, 26.

To live together, as in the same house. "That his sisters, the lady Turner and Arabella Clerk, might *cohabit* in the capital house." 2 *Vern.* 323.

COHABITARE. L. Lat. [from *con*, together, and *habitare*, to dwell, or be often with.] In old English law. To live with, or together, as husband and wife; to be often with, or together; to cohabit. *Stat. Westm.* 2, c. 34. *Cohabitabant ut vir et uxor*. *Dyer*, 76 b, (Fr. ed).

COHÆRES. Lat. [from *con*, together, and *hæres*, an heir.] In old English law. A co-heir, or joint heir. *Co-hæredes*; co-heirs. A term applied to coparceners, who constitute, as it were, one heir or body; (*quasi unum corpus propter unitatem juris quod habent*). *Bract.* fol. 76 b, 67 b. *Co-hæres particeps cum co-hærede particeps*; coparcener with coparcener. *Id.* fol. 97 b.

COHERTIO. L. Lat. [from *coercere*, corrupted to *cohercere*, to compel.] In old English law. Coercion; the coercive power of a court. *Bract.* fol. 344. *Stat. Westm.* 2, c. 34. Lord Coke uses *coherction* as an English word. 2 *Inst.* 436.

Restraint without process of law. *Fleta*, lib. 2, c. 47, § 13.

COIF. [L. Lat. *coifa*, from Fr. *coiffe*;

birretum.] In English practice. A covering for the head, formerly worn as a distinctive badge by serjeants at law, (*tegmen capillare album quo insigniuntur servientes ad legem*.) *Spelman*, voc. *Coifa*. It is mentioned by Matthew Paris as early as A. D. 1259, under the name of *coifa*, from the Fr. *coiffe*. Sir John Fortescue calls it *birretum*, (q. v.) *De Laud. Leg. Angl.* c. 50. The original use of this covering is supposed to have been, to conceal the clerical tonsure, (q. v.) *Matt. Par. apud Spelman*, ub. sup.

COIFA. L. Lat. In old records. A coif. *Spelman*. See *Coif*.

COILLER. L. Fr. To collect. *Britt.* c. 21. *Bendl.* pl. 26.

COIRE. Lat. [from *con*, together, and *ire*, to go.] In the civil law. To come together; to associate as one body. *Corpus cui licet coire*; a body which is allowed to associate as a corporation, (*collegium*). *Dig.* 34. 5. 20. See *Dig.* 40. 3.

CO'IS. A contraction of *communis*. 1 *Instr. Cler.* 9.

COJUDICES. Lat. In old English law. Associate judges having equality of power with others. *Treatise of the Masters of the Chauncerie*, II. *Hargr. Law Tracts*.

COLIBERTUS, *Collibertus*, *Conlibertus*, (plur. COLIBERTI.) L. Lat. *Coliberti*, or *coleberti*, are a class of inferior tenants mentioned in Domesday, whom Lord Coke considers to have been tenants in free socage by free rent. *Domesday*, cited in *Cowell. Co. Litt.* 5 b, 86 a. *Cowell* defines them also to be such as, being villeins, were manumitted.

COLLATERAL. [L. Lat. *collateralis*, from *con*, together, and *lateralis*, on the side.] Connected by, or on the side.* Coming in, or adhering to the side of any thing. *Termes de la Ley. Hæredes à latere venientes*; heirs coming in, on, or from the side, collateral heirs. *Bract.* fol. 20 b. Answering to the *ἐκ πλαγίας κληρονόμοι*, in the Greek of the civil law. *Nov.* 118, c. 3.

That which is beside another thing; additional. See *infra*.

COLLATERAL CONSANGUINITY or KINDRED. [L. Lat. *cognatio à latere*.] That kind of consanguinity, kindred or relationship, which exists between persons who are descended from one and the same stock or ancestor, whether near or remote; as between two brothers descended from the same father, or between two consins descended from the same grandfather. 2

Bl. Com. 204, 205. It is thus distinguished from *lineal* consanguinity, in which the relatives are descended the one from the other. *Id.* 204. See *Lineal consanguinity*.

Lineal consanguinity being usually represented by a perpendicular or *right line*, (*linea recta*), in which the kindred are ranked relatively, one above or below the other, as father, son, grandson, *collateral* consanguinity is properly denoted by one or more *transverse* lines, crossing this, or proceeding *obliquely* from it *on the side* (*à latere*) upon which the kindred are ranked in their order. See *Dig.* 38. 10. 9. 10.

COLLATERAL ISSUE. In practice. An issue taken upon matter *aside* from the intrinsic merits of the action, as upon a plea in abatement; or *aside* from the direct and regular order of the pleadings, as on a demurrer. 2 *Arch. Pr.* 1, 6; book 2, part 1, 2.

The term *collateral* is also applied, in England, to an issue raised upon a plea of diversity of person, pleaded by a criminal who has been tried and convicted, in bar of execution, viz.: that he is not the same person who was attainted, and the like. 4 *Bl. Com.* 396.

COLLATERAL LIMITATION. In the law of estates. A limitation of an estate which gives an interest for a specified period, but makes the right of enjoyment to depend on some *collateral* event; as a limitation of an estate to a man and his heirs, tenants of the manor of Dale, or to a woman during widowhood, &c. 4 *Kent's Com.* 128.

COLLATERAL SECURITY. A security in addition to or *besides* another, or principal security; to be resorted to in case of failure of the principal security. A bond in this sense is collateral security to the mortgage which it accompanies, although the mortgage, in its form, purports rather to be collateral to the bond.* *Termes de la Ley*.

COLLATERAL WARRANTY. A warranty of lands, collateral to the title of the heir, or him upon whom the warranty falls; a warranty made by a person who is collateral to the title, i. e. a person out of the line, or *on the side* (*à latere*) of the title, and through whom the title did not pass.* *Litt.* sect. 717. Described in the books to be "where the heir's title to the land neither was, nor could have been derived from the warranting ancestor." 2

Bl. Com. 301. 4 *Kent's Com.* 469. Story, J. 1 *Sumner's R.* 262. As where a younger brother released to his father's disseisor with warranty, this was collateral to the elder brother. *Litt.* sect. 705, 707. So where a son purchased lands in fee, and his father disseised him, and aliened to another with warranty, and died, this was a collateral warranty to the son. *Id.* sect. 704, 705. See 2 *Hilliard's Real Prop.* 361, 362. *U. S. Digest*, Collateral warranty. See *Lineal warranty*.

* * The distinction between *lineal* and *collateral* warranty seems to have always been a subtle one, and not easily apprehended; and the most careful definitions given in the books are not free from obscurity, owing in a great degree to the peculiar meaning given to the word *collateral*. Lord Coke, in commenting upon Littleton, (sect. 717,) observes that "it is not adjudged in law a collateral warranty in respect of the blood, for the warranty may be collateral, albeit the blood be lineal, and the warranty may be lineal, albeit the blood be collateral. But it is in law deemed a collateral warranty in respect that *he that maketh the warranty is collateral to the title of him upon whom the warranty doth fall.*" *Co. Litt.* 376 a.

COLLATERALES ET SOCIL. *L. Lat.* Assessors; assistants and associates [of the chancellor]. Former titles of masters in chancery. 2 *Reeves' Hist. Eng. Law*, 251. *Fleta*, lib. 2, c. 13, § 12. So called, because they sat by his side at a certain table in Westminster Hall, and in other places. *Treat. of the Masters of the Chaucerrie*, II.

COLLATIO. *Lat.* [from *conferre*, to bring or put together; to confer.] A bringing or putting together; a throwing into one fund or mass. See *Collatio bonorum*.

Contribution or average, in maritime law. *Loccen. de Jur. Mar.* lib. 2, c. 8, § 1.

A comparison of two things by putting them together. *Collatio signorum or sigillorum*; comparison of seals. The ancient mode of testing the genuineness of a seal, by comparing it with another known to be genuine. *Bract.* fol. 389 b, 398 b. *Fleta*, lib. 6, c. 34, § 5. See *Comparatio litterarum*, Comparison of hands.

A conferring or bestowment of a thing; collation. *Reg. Orig.* 31 b. See *Collation*.

COLLATIO BONORUM. In the civil

law. Collation of goods. A bringing together of goods or property into a common fund; especially of property received of a testator by way of advancement, for the purpose of a more equitable division among the heirs. *Dig.* 37. 6. 1. *Cooper's Justin. Inst.* Notes, *574, 575. *Cod.* 6. 20.

This term has been applied, in the common law, to the bringing of any portion or sum of money advanced by a father to a son or daughter, into *hotchpot*, or common fund, in order to have an equal share with the other children, of his personal estate when he dies, in pursuance of the statute of distributions. *Tomlins.* 2 *Bl. Com.* 517. 4 *Kent's Com.* 419. 1 *Sumner's R.* 421. See *Hotchpot*.

In Louisiana, this return of property to the mass of the succession is termed *collation*, or, in French, *rapport*. *Civil Code of Louisiana*, Art. 1305—1367. 4 *Kent's Com.* 419, note.

COLLATION TO A BENEFICE. [*L. Lat. collatio beneficii.*] In English ecclesiastical law. The conferring or bestowing of a benefice by the bishop, where he has himself the advowson, or right of patronage, and which single act of collation effects all that is done in common cases by the acts of *presentation* and *institution*. 2 *Bl. Com.* 22. Or, in other words, the presentation and institution are one and the same act, and taken together are called a *collation*. 1 *Bl. Com.* 391. 1 *Wooddes. Lect.* 193. The advowson, in such cases, is termed an *advowson collative*. 2 *Bl. Com.* 22.

COLLECTORES. *L. Lat.* In old English law. Collectors; persons appointed to make collections for another. In a writ of protection in the Register, granted to the Hospital of St. John of Jerusalem, they are classed with *procuratores*, *attornati* and *nuncii*. *Reg. Orig.* 282 b.

COLLEGA. *Lat.* In the civil law. A colleague; an associate; one having the same power with another, (*qui sunt ejusdem potestatis*). *Dig.* 50. 16. 173.

COLLEGATARIUS. *Lat.* In the civil law. A co-legatee. *Inst.* 2. 20. 8.

COLLEGE. [*from Lat. collegium, q. v.*] A collection, assemblage or company of persons. An association of persons, authorized by law, for the performance of some duty or office, or the attainment of some object, whether literary, scientific, political or ecclesiastical.

COLLEGIALITER. *L. Lat.* [*from collegium, q. v.*] In a corporate capacity. 2 *Kent's Com.* 296.

COLLEGIATE CHURCH. In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church. Such as the churches of Westminster, Windsor, and others. *Cowell.*

COLLEGIUM. *Lat.* [*from colligere, to gather together; Gr. συναγαγε.*] In the civil law. An association of persons, usually of the members of a trade; a corporation, company, or college; (otherwise called *universitas*), established by authority of law. *Dig.* 3. 4. 1. et per tot. See *Id.* 47. 22. It necessarily consisted of three persons at least, (*tres faciunt collegium*). *Dig.* 50. 16. 85. A *collegium* which was confirmed by special enactment, or by a *senatus consultum*, or an imperial constitution, was called *collegium licitum*, or *legitimum*. Otherwise it was illegal, (*illicitum*). *Dig.* 47. 22. 3. 1. 2 *Kent's Com.* 268, 269. See *Tayl. Civ. Law*, 567, 568, 570. As to the application of this word in English law, see *Dyer*, 233 b, 267.

COLLEGIUM AMIRALITATIS. *L. Lat.* The college or society of the admiralty. See a description of this institution in *Loccenius de Jur. Mar.* lib. 2, c. 2.

COLLIGENDUM BONA DEFUNCTI. See *Ad colligendum*.

COLLISION. [*Lat. collisio, from collidere, to dash together; Fr. abordage.*] A dashing, or violently running together. Usually applied to the running foul of vessels. Sometimes distinguished from *allision*, (*q. v.*) *Jacobson's Sea Laws*, 324. *Strykhus de Collis. Nav.* cited *ibid.* 3 *Kent's Com.* 230, 302, note. *Abbott on Ship.* part 3, ch. 1.

COLLISTRIGIUM. *L. Lat.* [*quasi collum stringens, binding the neck.*] In old English law. The pillory. *Spelman. Cowell*, voc. *Pillory*. Called in Saxon *halfang* or *healfang*. In old Scotch, "the jogga." *Skene de Verb. Signif.* Mr. Barrington translates the word, *stretch-neck*, and hence infers that the offender was actually suspended by the neck. *Obs. Stat.* 55, 211. But *stringere* does not signify "to stretch," but "to grasp or bind." See *Healfang, Pillory*.

COLLOBIUM. *L. Lat.* A hood or covering for the shoulders, formerly worn by serjeants at law, (*cucullus, sive super-*

humeral, quo induuntur servientes ad legem.) *Spelman.*

COLLOCATION. Fr. In French law. The arrangement or marshalling of the creditors of an estate in the order in which they are to be paid according to law. *Merlin, Repert.*

COLLOQUIUM. L. Lat. [from *colloqui*, to speak together, to converse.] In pleading. Conversation; discourse. A term applied to that part of the declaration in actions of slander, where it is alleged that the defendant spoke the words in a certain discourse or conversation (*in quodam colloquio*), which he had with others, or with the plaintiff in the presence of others, concerning the plaintiff; and which is followed by an averment that the words were spoken of and concerning the plaintiff. 2 *Chitt. Pl.* 633. *Bronson, J. 2 Hill's (N. Y.) Rep.* 282, 284. The term *colloquium* is also sometimes applied to the whole of this averment. 1 *Chitt. Pl.* 403. 1 *Starke on Slander*, 383. *Cooke on Defamation*, 92.

COLLUSION. [Lat. *collusio*, from *colludere*, to play together.] A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right. *Cowell. Reg. Orig.* 179. *Termes de la Ley.* An agreement between two or more persons to defraud another by the forms of law, or to employ such forms as means of accomplishing some unlawful object.

COLLYBISTA. Græco-Lat. [Gr. *κολλυβιστής*.] In the civil law. A money-changer; a dealer in money, (*argentarius, nummularius, trapezita*.) See *Argentarius*.

COLLYBUM. Græco-Lat. [Gr. *κολλυβιον*.] In the civil law. Exchange, (*cam-bium*). *Grotius de Jur. Bell.* lib. 2, c. 12, § 3, par. 4.

COLNE. Sax. In Saxon and old English law. An account or calculation. 1 *Reeves' Hist. Eng. Law*, 284, note. Otherwise written *cone*. *Bract.* fol. 86 b. *Spelman*, voc. *Cone et Key*. *Cowell*. See *Cone & Key*.

COLOMBIER. Fr. In French law. A dove-cot or pigeon-house. *Guyot, Inst. Feod.* ch. 21.

COLONIA, Colonica. L. Lat. [from *colonus*, q. v.] In old European law. A portion of land assigned to a single *colonus* for cultivation, as a task, (*ad unius coloni*

pensum designata.) Or a country house, with sufficient land for the support of a husbandman and his family. *Spelman.*

COLONUS. Lat. [from *colere*, to cultivate.] In old European law. A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon *ceorl*. 1 *Spence's Chancery*, 51. See *Barringt. Obs. Stat.* 302, note [u].

COLOR. Lat. Colour. A term of the ancient rhetoricians, adopted at an early period into the language of pleading in actions at common law. *Steph. Pl.* 202. Color a rhetoribus appellatur probabilis alicujus rei causa, quâ quod falsum aut turpe est velamus. Colour is called by the rhetoricians the probable cause of any thing, with which we disguise what is false or base. *Turneb. in notis ad Quintil.* cited *Steph. Pl. Appendix*, Note (49).

In a general sense, mere appearance as distinguished from reality; the exterior or *prima facies* of a thing; a false or assumed appearance; a cover, cloak, disguise or pretext.* See *Prima facie*, *Color officii*.

COLORE. Lat. By color (of a supposed estate or right.) Usually taken in a bad sense. *Towns. Pl.* 24. See *Colore officii*.

COLOR OFFICIL. L. Lat. Colour of office. The mere semblance, shadow or false appearance of official authority.* The dissembling face of the right of office. *Termes de la Ley.* The use of official authority as a pretext or cover for the commission of some corrupt or vicious act.* See *Colore officii*.

COLORABLE. See *Colourable*.

COLORE OFFICIL. L. Lat. [L. Fr. *per colour de son office*.] By color of office; under pretence of official authority.* This term is always taken in a bad sense (*in malam partem*), and differs from the words *virtute officii*, or *ratione officii*, which are always taken in a good sense, (*in bonam partem*); and where the office is the just cause of the thing, and the thing is pursuant to the office. See 2 *Esp. N. P. C.* 542, cited 9 *East*, 364. But *colore officii* implies that the thing is under pretence of office, but not duly, and the office is no more than a cloak to deceit, and the thing is grounded upon vice, and the office is as a shadow thereto. *Plowd.* 64, arg. See *Id.* 68. *Termes de la Ley*.

COLOUR. [Lat. *color*, q. v.] In pleading. An apparent or *prima facie* right.

"To give colour" is to admit such a right. *Steph. Pl.* 202, 203. Colour is of two kinds, implied and expressed.

Implied colour is that which is naturally inherent in the structure of all pleas in confession and avoidance. *Id.* 206. That is, they all *admit a right* in the opposite party, but at the same time *avoid it*.^{*} See *Confession and avoidance*.

Express colour is defined to be, "a feigned matter pleaded by the defendant in an action of trespass, from which the plaintiff seems to have a good cause or action, whereas he has in truth only an appearance or *colour* of cause." *Bac. Abr. Trespass*, (T. 4). Or, in the words of the author of the *Termes de la Ley*, it is "feigned matter which the defendant or tenant uses in his bar [plea,] when an action of trespass or an assise is brought against him, in which he gives the demandant or plaintiff a *show at first sight* that he hath good cause of action, where in truth it is no just cause, but only the *colour and face* of a cause." See this subject further explained in *Stephen on Pleading*, 206, *et seq.* *Id.* 225, (Am. ed. 1824), *et seq.* 3 *Reeves' Hist. Eng. Law*, 438.

COLOURABLE PLEADING. The practice of giving *colour* in pleading. 3 *Reeves' Hist. Eng. Law*, 438.

COLPARE. L. Lat. In old English law. To lop or top, as trees; to cut off the boughs. *Cowell. Colpatura*; a lopping or topping of trees. *Id.*

COLPER. L. Fr. To cut. *LL. Gul. Cong.* l. 13.

COLPICIUM. L. Lat. In old records. *Salvis colpiciis infra boscum predictum.* The editor of *Cowell* (who is followed by Blount,) citing an old charter in which these words occur, supposes that by *colpiciis* is meant saplings [saplings!] or young poles, &c. This word undoubtedly is the Latin form of the English *copice* or copse-wood; i. e. young wood, subjected to frequent cutting or lopping (*colpatura*), and probably the same with *sylvæ cadua*, (q. v.).^{*}

COLPINDACH. In old Scotch law. A young beast or cow, of the age of one or two years; in later times called a *cowdach*, or *quoyach*. Skene says it is an Irish word, and properly signifies a *foot-follower*, (ane fut follower). *De Verb. Signif.*

COLUMBARIUM. Lat. [from *columba*, a dove.] In old English law. A dove-

house, or dove-cot. *Shep. Touch.* 10. *Towns. Pl.* 183.

COMANDER, Comaunder. L. Fr. To commit or send. *Comaundes a la prison*; committed to prison. *Britt.* c. 21.

COMBARONES. L. Lat. In old English law. Fellow barons; fellow citizens. The citizens or freemen of the Cinque ports being anciently called *barons*; the term *combarones* is used in this sense in a grant of Henry III. to the barons of the port of Faversham. *Cowell.* See *Baron*.

COMBAT. Eng. and Fr. [L. Lat. *duellum, campus*; L. Fr. *battail, bataille*.] In old English law. The formal trial of a doubtful cause or quarrel, by the swords or batons of two champions. *Termes de la Ley. Cowell.* Otherwise called *trial by battel*. See *Battel, Duellum*.

COMBE. [Sax. *cumbe*, L. Lat. *comba*.] In old English law. A valley. *Domesday. Cowell. Co. Litt.* 4 b, 5 b.

COMBINATION. Union of persons or things.

In patent law. Union of parts, as of machines or machinery. See 2 *Mason's R.* 112. 1 *Curtis' R.* 279. *Curtis, J. Id.* 292.

COMBUSSOR. L. Lat. [from *comburere*, to burn.] In old English law. A burner; an incendiary. *De combussoribus domorum. Fleta*, lib. 2, c. 52, § 9.

COMBUSTIO. Lat. [from *comburere*, to burn.] In old English law. The punishment of burning, inflicted upon apostates and others. *Fleta*, lib. 1, c. 37, § 2.

COMBUSTIO DOMORUM. Lat. In old English law. The burning of houses; house-burning. A term formerly used to denote the crime of arson. 1 *Hale's P. C.* 346, [566]. 4 *Bl. Com.* 373. *Bract.* fol. 146 b. *Fleta*, lib. 1, c. 37.

COMBUSTIO PECUNIÆ. L. Lat. In old English law. The burning [that is, melting] of money. The old way of trying mixed and corrupt money, by melting it down upon payments into the exchequer. *Cowell.*

In the time of King Henry II. the bishop of Salisbury being treasurer, considered that though the money did answer *numero et pondere* (in number and weight,) it might be deficient in value, because mixed with copper or brass. Therefore, (*consilio regis, et regia simul et publica providere utilitati*) a constitution was made, called the *trial by combustion*, the practice of which differed in little or nothing from the present method

of assaying silver. *Lounedes' Essay upon Coin*, 5, cited in *Cowell*.

COME. L. Fr. As. *Come de det*; as of duty, (*ex debito*). *Mirr.* c. 5, § 1. *Come ceo que il ad*, &c.; as that which he hath, &c. See *Sur cognizance*, &c.

So. *Come Dieu luy aide*; so help him God. The conclusion of the old coronation oath of the English sovereigns. 1 *Bl. Com.* 236, note.

Whereas. *Rot. Parl.* 4 Hen. IV. 1 *Rep.* Ch. Appendix.

To COME. In pleading and practice. To appear in court; as a party does in an action at law. A defendant in pleading is said to "*come and defend*." Where a party fails to appear, the language of the record is, that he "*comes not*, but makes default."

To COME TO LAND. [Fr. *venir a la terre*.] In old English law. To acquire land; to obtain possession under a title. This, together with the still used term *in*, (Fr. *ens*), appears to be derived from the old practice of giving livery of seisin, in which the feoffee actually *went* in person to the land, and entered upon it.* "If he come to the land (*s'il vient a la terre*), by a later title, yet the law will adjudge him in (*la ley lui adjugera ens*) by force of the elder title." *Litt.* sect. 659, 660. See *In*.

COMEN. L. Fr. Common. *La comen ley*; the common law. *Thel. Dig.* lib. 11, c. 10, ¶ 8, 21. *Le comen banke*; the common bench. *Id.* ¶ 17. *Comen counsel*. *Yearb.* M. 10 Edw. III. 67.

COMMENT. L. Fr. Although; notwithstanding. *Litt.* sect. 15.

COMES AND DEFENDS. [L. Lat. *venit et defendit*.] A phrase of great antiquity in pleading, and hitherto always used at the commencement of a defendant's pleas and demurrers to the declaration; the word "*comes*" very appropriately and significantly expressing his appearance, and "*defends*" his defence. "And the said defendant *comes and defends* the wrong and injury, when, &c., and says that," &c. *Steph. Pl.* 62, 67, 71. (Am. ed. 1824.) 1 *Burr. Pr.* 163. In the recent revision of the forms of pleadings in England, this clause has been omitted. See *Venit et defendit*.

COMES. Lat. [pl. *comites*, from *comitor*, to accompany, or follow; L. Fr. *comite*.] A companion, follower or attendant. An official and honorary title of great antiquity, and very various application; originating

under the Roman empire, and retained in the institutions of most of the early nations of Europe, but chiefly remarkable for its equal use in denoting the *comte* or *count* of the Franks, the *grave*, *graf*, or *graff* of the Germans, the *countee* of the Anglo-Normans, the *caldorman*, *alderman*, or *shireman* of the Saxons, and finally, the *earl* of the English and Scotch. 1 *Bl. Com.* 116, 398. *Spelman. Termes de la Ley*, voc. *Countee*. *Ersk. Inst.* b. 1, tit. 4, § 1. See *Count*, *Countee*, *Alderman*, *Earl*, *Grave*, *Reeve*, *Schire-man*.

* * The origin of this title has been traced by Spelman to the household or court of the Roman emperors, who gave the name of *comites* to their personal attendants, or those who belonged to their following or retinue, (*comites vocabant quotquot e comitatu principis erant*.) It came afterwards to be used (with the Græco-barb. *κομης*) as a title not only of honor, but of office, and with no restriction as to grade in either; but its prevailing signification was that of *chief*, *superintendent*, or *governor*, (Gr. *ἀρχων*.) See *Od.* 1. 32, 38, [34,] 34, 36. *Od.* 12. 10, 11, 12, 13, 14. *Nov.* 8, cc. 2, 3, 5. *Nov.* 27. Thus, among other officers noticed at length by Spelman, the *comites provinciarum* were the rulers or governors of provinces, who combined the authority of a civil magistrate and judge, with the powers of a military commander. From these, according to the same writer, were immediately derived the *comites* of the lower ages. And see *Feud. Lib.* 1, tit. 1. *Lib.* 2, tit. 10.

Among the Franks, Germans, and other early nations, the term *comes* was applied to one who was selected by the king from his own attendants, (*e comitatu suo*), and sent to govern some city or territory, and from whom such territory, as well as the office itself, was called *comitatus*. A prominent feature of this officer was his judicial character. Spelman calls him expressly a judge, (*reges e comitatu suo miserunt iudicem, — munus comitis judicarium fuit*), and refers to the use of the word in this sense, among the ancient Germans, as early as the time of Tacitus. See *Comite*.

As to the introduction of this term into England, it may be observed that the title *comes* is found associated among the Anglo-Saxons, with some kind of territorial authority, at a period anterior to the division of the kingdom into counties, but its use does not appear to have been fully established until afterwards, when it was applied by

the Latin interpreters, to the *reeve*, *alderman*, or chief magistrate of the shire, as denoting the union in these officers of territorial jurisdiction with judicial authority. The Danes introduced the corresponding title of *eorle*, and the Normans that of *comte*, or *countee*; but the former being adopted by the Saxons, seems to have soon superseded the latter. *Comites* are mentioned in *Magna Charta*, (c. 14,) and by Bracton, as the highest order of persons in the kingdom, whose title the last named author derives a *comitatu sive a societate*, and whom he otherwise calls *consules*, (*a consulendo*), as being the king's advisers and associates in the government of the people. *Bract. fol. 5 b. Id. fol. 34, 351 b.* The deputy of the *comes*, (earl or count,) was called *vice comes*, which is still the Latin appellation of sheriff, (the earl's successor in the government of the shire,) as *comes* is of earl at the present day. 1 *Bl. Com.* 116. See *Sheriff*.

COM'IA. A contraction used for *Communia*, (q. v.) *Fleta*, lib. 4, c. 1, § 16.

COMINALTIE. L. Fr. The commonalty or people. See *Comminality*.

COMITAS. Lat. Comity; courtesy; civility. *Comitas inter communitates*; comity between communities or nations; comity of nations. 2 *Kent's Com.* 457. That indulgence or liberality by which the laws of one nation are allowed to operate within the territories of another. See *Comity*. The rule is, that *comitas* is to be observed *quatenus sine præjudicio indulgentium fieri potest*, (as far as can be done without prejudice to those who allow it). *Kent, C. 4 Johns. Ch. R.* 460, 477.

COMITATUS. Lat. In the Roman law. The court (*aula*), or household of the emperor. *Dig.* 29. 1. 43.

In feudal law. The dignity, office or fief of a *comes* or count. *Feud. Lib.* 1, tit. 14. *Lib.* 2, tit. 10.

COMITATUS. L. Lat. In old English law. A county or shire. So called from the *comes*, or earl, who formerly had the government of it, as *county* is derived from Fr. *comte*, count, denoting the same officer. 1 *Bl. Com.* 116, 398. *Co. Litt.* 168 a. *Spelman*, voc. *Comites*. *Mitemus justiciarios per unumquemque comitatum semel in anno, qui cum militibus comitatum capiunt in comitatibus assisas prædictus*; we will send justices through every county once a year, who, with the knights of the shires, shall take in the counties the assises

aforesaid. *Mag. Cart.* 9 Hen. III. c. 12. See *Comes*.

An earldom. *Bract.* fol. 84. Still so called in Latin, although an earl has no territorial authority as formerly. *Co. Litt.* 83 b. 1 *Ld. Raym.* 13.

The county court, called among the Saxons *scyre gemote*; the *mallum* or *placitum* of the early continental nations. *Magna Charta*, c. 35. *Crabb's Hist. Eng. Law*, 47, 146. *Nullus comitatus teneatur nisi de mense in mensem*; no county court shall be held unless from month to month. *Fleta*, lib. 2, c. 52, § 2. Anciently a court of great dignity, and called by *Spelman* *forum plebeie justitie et theatrum comitiva potestatis*; the tribunal of common justice, and the seat of the power of the county. *Spelman*, voc. *Comites*, *Comitatus*. 3 *Bl. Com.* 36.

A train or body of companions, followers, or attendants; literally, a following, or attendance; a prince's court or household. *Spelman*, *ub. sup.* In the Roman law, the retinue of the governor of a province. *Adam's Rom. Ant.* 171.

COMITES. [pl. of *comes*, q. v.] Companions, attendants or followers; retainers or adherents. 1 *Bl. Com.* 254. 1 *Steph. Com.* 161. *Spelman*, voc. *Comites*. *Esprit des Lois*, liv. 30, c. 16.

Earls or counts. *Magna Charta*, c. 14. *Bract.* fol. 5 b. *Fleta*, lib. 1, c. 17, § 9. *Brownl.* part. 2, 339. See *Comes*.

COMITES PALEYS. L. Lat. Counts or earls palatine; those who had the government of a county palatine. *Bract.* fol. 122 b. Other copies of Bracton have *comites palentynes*. See *County palatine*.

COMITIA. Lat. [from *coire*, quasi *co-mire*, to assemble.] In the Roman law. General assemblies of the people, convened by the constitutional authority of some magistrate, in order to enact or repeal any thing by their suffrages. *P. Cyclopædia. Aulus Gellius, Noct. Att.* xv. 27. *Id.* xiii. 15. *Sigonius de Ant. Jur. Civ. Rom.* i. 17. *Gruchius de Comit. Rom.* lib. iii. They were of three kinds; *curiata*, *centuriata*, and *tributa*. See *infra*.

A name sometimes given to the English parliament. *Bacon's Works*, ix. Index.

COMITIA CURIATA. Lat. Assemblies of the people instituted by Romulus, in which they voted in *curiæ*, or parishes, of which there were thirty. See *Curia*. They were assemblies of the patrician order, or at least they were so constituted that that

order must have possessed a great preponderance in them. But see *Taylor's Civ. Law*, 183. They were also termed *comitia calata*. *Aulus Gellius, Noct. Att.* xv. 27. 1 *Kent's Com.* 518, 519, note.

COMITIA CENTURIATA. Lat. *Comitia* of centuries. Assemblies of the people, instituted by Servius Tullius, in which they gave their votes in centuries. These *comitia* embraced all the orders of the state, though the patricians and men of property generally exercised a controlling influence in them. *Aulus Gellius, Noct. Att.* xv. 27. 1 *Kent's Com.* 519, and note. *Taylor's Civ. Law*, 183. *Federalist*, No. 34. They were held for the election of magistrates, the making of laws, and the trial of offences against the state, and were the most important of the three kinds of *comitia*.

COMITIA TRIBUTA. Lat. *Comitia* of tribes. Assemblies of the Roman people, established B. C. 491, in which they voted according to tribes. From the circumstance that neither birth nor fortune gave any advantage in these *comitia* as in the others, all the people meeting on an equality, and voting *per capita*, they have been considered as assemblies of the plebeians only. 1 *Kent's Com.* 519, and note. *Aulus Gellius, Noct. Att.* xv. 27. *Federalist*, No. 34. *Taylor's Civ. Law*, 200.

COMITIA CALATA. Lat. [from O. Lat. *calare*, to call or convoke.] *Comitia* convened for certain religious purposes, and at which testaments were usually made. *Aul. Gell. Noct. Att.* xv. 27. The term is usually applied to the *comitia curiata*, but Gellius applies it to the *comitia centuriata* also; the only distinction being that the former were called by a lictor, the latter by a cornicen, or trumpeter. *Id. ibid.*

COMITISSA. L. Lat. [from *comes*, an earl.] In old English law. A countess; an earl's wife. *Towns. Pl.* 149. *Bract.* fol. 93 b, 219.

COMITIVA. L. Lat. [from *comes*, q. v.] In old English law. The dignity and office of a *comes*, (count or earl); the same with what was afterwards called *comitatus*. *Spelman.*

Used in the Register, in the sense of *comitatus*, a train, suite, following, attendance, or household. *Reg. Orig.* 23, 24.

COMITY. [Lat. *comitas*, q. v.] Courtesy. *Comity of nations* is the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of

another. *Story, Conf. Laws*, § 38. See 20 *Johns. R.* 263, Platt, J.

COMMANDERY, Commandry. [Lat. *præceptoría*.] In English law. An establishment belonging to the priory of St. John of Jerusalem, consisting usually of a manor, or chief messuage, with lands and tenements appertaining thereto, under the government of an officer called a *commander*, who received a part of the income thence arising for his own use, and accounted for the rest. *Cowell. Termes de la Ley. P. Cyclopædia. Encycl. Americ.*

COMMANDITÉ or SOCIÉTÉ EN COMMANDITÉ. Fr. [Ital. *accomandita*; from Lat. *commendare*, to deposit or entrust.] In French law. A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called *commandataire*, or *commanditaires*, or partners *en commandité*; the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. *Story on Partn.* § 78. *Wordsworth on Joint Stock Companies*, 2. 3 *Kent's Com.* 34. This kind of partnership has been introduced into American law, and is authorized by statute in several of the states. *Id.* 35. See *Troubat on the Law of Commandatary and Limited Partnership*, chap. 3, 4.

COMMANDITAIRES. Fr. Special partners; partners *en commandité*. See *Commandité*.

COMMANDMENT. [L. Fr. *commandement*; L. Lat. *præceptum*.] In practice. An act of authority, as of a magistrate or judge, in committing a person to prison.* *Cowell.*

In criminal law. The act or offence of one who commands another to transgress the law, or do any thing contrary to law, as theft, murder, or the like. *Bract.* fol. 138, 139. *Termes de la Ley. Stat. Westm.* 1, c. 14. Particularly applied to the act of an accessory before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 *Inst.* 182.

COMMARCHIO. L. Lat. A boundary or border; a common boundary. See *Marchiare*.

COMMEATUS. Lat. Provisions. The Haabet, 2 Rob. Adm. R. 182.

COMMENDA. L. Lat. [i. e. *ecclesia commendata, vel custodia ecclesiæ alicui commissa*; a church commended, or the care of a church committed to any one.] In English ecclesiastical law. A living or benefice *commended* by the crown to the care of a clerk, to hold till a proper pastor is provided for it; otherwise called a *commenda retinere*. 1 Bl. Com. 393. When a clerk is promoted to a bishopric, all his other preferments are void the instant he is consecrated. But he is sometimes allowed, by favor of the crown, to retain or hold them in *commendam*, as it is termed, from which these livings have obtained the name of *commendam*. *Id. ibid.* 3 Steph. Com. 87. *Termes de la Ley*. Cowell. By the statute, 6 & 7 Will. IV. c. 77, s. 18, no *commendam* can in future be granted.

COMMENDA. Lat. [Fr. *commande*; from *commendare*, to deposit, to lend or entrust.] In mercantile law. An association in which capital was entrusted to individuals. *Troutab on Command. & Lim. Part. ch. 3, § 27.*

COMMENDAM. See *Commenda*.

The limited partnership (or *Société en commandite*) of the French law has been introduced into the Code of Louisiana under the title of partnership in *commendam*. *Civ. Code of Louis. Art. 2810.* 3 *Kent's Com.* 34, 35.

COMMENDARE. Lat. In the civil law. To commend; to recommend a person. *Si petieris a me uti te alicui commendarem, et eas commendaticias tibi misero literas*; if you should ask of me to recommend you to a person, and I should give you a letter of recommendation. *Dig. 41. 1. 65. pr.* See *Id.* 47. 2. 64. 4.

To commend or praise a thing, as an article offered for sale. *Quod venditur ut commendet dicit*; what a seller says in order to commend. *Dig. 4. 3. 37.* See *Id.* 18. 1. 43. pr.

To deposit; to lend; to entrust a thing. *Dig. 50. 16. 186.* *Id.* 16. 3. 34.

COMMENDARE. L. Lat. In old European and feudal law. To commend, commit or entrust one's self to the protection of another, (called among the Saxons *mundburde*, or *mundbyrd*.) *Spelman*, *Cowell*, *voc. Mundeburde*. Mr. Spence traces this practice to the Roman law. 1 *Spence's Chancery*, 29.

COMMENDATI. See *Commendatus*.

COMMENDATIO. Lat. [from *commendare*, to commend.] In the civil law. Commendation; praise or recommendation. *Simplex commendatio non obligat*. Mere commendation [of an article] does not bind [the seller; does not amount to a warranty]. 2 *Kent's Com.* 485. *Ex qua commendandi causa, in venditionibus dicatur, si palam appareant, venditorem non obligant*. Things which are said, on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. *Dig. 18. 1. 43. pr.*

COMMENDATUS. L. Lat. [from *commendare*, q. v.] In feudal law. One who entrusts himself to the protection of another. *Spelman*. A person who, by voluntary homage, put himself under the protection of a superior lord. *Cowell*, *voc. Commendati*. His obligation in such case was to faith and obedience, (*fide et obsequio*), but without oath, or any tenure. *Spelman*. *Domesday*, cited *ibid.*

COMMERCE. [Lat. *commercium*, from *com*, together, and *mercari*, to trade, from *merz*, *merchandise*.] In a strict sense, traffic in merchandise.

In a general sense, an interchange or mutual change of goods, wares, productions or property of any kind, between nations or individuals, either by barter, or by purchase and sale. *Webster*. Opinion of Daniel, J. 7 *Howard's R.* 501. *Commerce* is made by Webster and others, the synonyme of *trade*, and divided into foreign and inland. A distinction, however, is frequently made between *commerce* and *trade*, properly so called; the former term being used to denote intercourse with foreign nations; the latter, intercourse between citizens or subjects of the same nation. *Wharton's Lex. Holthouse*.

Intercourse between nations; intercourse with foreign nations, including navigation. So defined, in construing the Constitution of the United States, Art. I. Sect. VIII. Marshall, C. J. 9 *Wheaton's R.* 1, 189. McLean, J. 7 *Howard's R.* 401. Wayne, J. *Id.* 436. Grier, J. *Id.* 462. The term seems, almost *ex vi termini*, to import intercourse by means of shipping. *Federalist*, No. 11. 3 *Kent's Com.* 1—21. See *Commercial law*.

COMMERCIA BELLI. Lat. In international law. Communications or conventions of war. Compacts or arrangements entered into between hostile powers or contending armies, by which a peaceful inter-

course is, for the time, established between them; as for the purpose of burying the dead, exchanging prisoners, and the like. *Grotius, de Jur. Bell.* lib. 2, c. 19, § 3. *Id.* lib. 3, c. 21, § 1. A truce is also a convention of this kind. *Id. ibid.* 1 *Kent's Com.* 159. Sir Wm. Scott, *The Daifje*, 3 *Rob. Adm. R.* 140. This phrase is taken from Grotius, who borrowed it from Philo. *Grot. de J. B.* lib. 2, c. 19, § 3, citing *Philo in Flacc.* p. 974 A.

War contracts. Contracts or conventions made between the subjects of two powers at war with each other; such as ransom bills, contracts made by prisoners of war for subsistence, and the like. 1 *Kent's Com.* 104, 105, 169.

COMMERCIAL LAW. The law by which the commerce of nations is regulated. The word *commercial* here so far implies intercourse by sea, or by means of shipping, as to be constantly used almost as the synonyme of *maritime*. 3 *Kent's Com.* 1—21. See *Maritime law*.

COMMERCIUM. Lat. In the civil law. Commerce, trade or traffic; dealing between one person and another, in the way of purchase and sale; a contract, *Dig.* 49. 15. 6. *Feud. Lib.* 2, tit. 52. *Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum*; commerce, by the law of nations, ought to be common, and not converted into monopoly and to the private gain of a few. 3 *Inst.* 181, *in marg.*

The right or power of purchase and sale; power over a subject of sale. *Inst.* 3. 20. 2. *Esse in commercio*; to be a subject of dealing, contract or acquisition. *Id.*

COMMESSALIS. L. Lat. In old English law. A table-companion; a messmate. *Fleta*, lib. 4, c. 8, § 8.

COMMINALTY, *Comminaltie*. L. Fr. The commonalty or people. *Stat. Westm.* 1, pr. *Confirm. Chas.* cc. 6, 7. 2 *Inst.* 530.

COMMUNATORIUM. L. Lat. [from *comminari*, to threaten.] In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. *Bract.* fol. 398.

COMMISE. Fr. In old French law. Forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal. *Guyot, Inst. Feod.* c. 12.

COMMISSARY. [L. Lat. *commissarius*, *officialis foraneus*.] In English ecclesias-

tical law. A title formerly applied to an officer who exercised spiritual jurisdiction in distant places of the bishop's diocese; being specially ordained for the purpose of supplying the bishop's jurisdiction and office in the outplaces of his diocese, or else in such places as were peculiar to the bishop, and exempted from the jurisdiction of the archdeacon. *Termes de la Ley.* *Cowell.* *Lyndewode Provinc.* cap. 1.

COMMISSION. [Lat. *commissio*, from *committere*, to commit or entrust.] In practice. A warrant or authority in writing and under seal, sometimes in the form of letters patent, empowering those to whom it is directed, to perform certain acts, or to exercise a certain jurisdiction.* *Termes de la Ley.* It is for the most part the same as the *delegatio* of the civilians. *Cowell.* See old forms of commissions, *Reg. Orig.* 64, 88, 128, 138. *Reg. Jud.* Appendix, 19. In England, the judges of the superior courts sit upon their circuits, by virtue of commissions. 1 *Tidd's Pr.* 41. And justices of the peace are always appointed by commission. See *infra*.

The individuals themselves, who act by virtue of such an authority.*

A writ issued out of some court under its seal, authorizing the persons named in it to perform certain specified duties, as to take the testimony of witnesses, &c.* See *Commission to take testimony*.

The order or instruction under which one person traffics, negotiates or acts for another.

The compensation allowed an agent for his services. *Story on Agency*, § 326.

To COMMISSION. To authorize or empower by virtue of a written warrant, authority or commission; to appoint with such authority.* The emphatic word in the old commissions is *constituimus*, (we have constituted,) or *assignavimus*, (we have assigned). *Bract.* fol. 109, 110. *Reg. Orig.* 64, 88, 128. *Reg. Jud.* Appendix, 19.

COMMISSION OF ASSIZE. In English law. One of the five several authorities, by virtue of which, until recently, the judges of the superior courts sat upon their circuits. 3 *Bl. Com.* 58. It was a commission directed to the justices and sergeants therein named, to take (together with their associates) *assizes* in the several counties; that is, to take the verdict of a peculiar species of jury called an *assise*, and summoned for the trial of landed dis-

putes. *Id.* 59. 1 *Tidd's Pr.* 41. 2 *Reeves' Hist. Eng. Law*, 426. See *Assise*. The recent abolition of assises and other real actions in England, has thrown this commission out of force; and it is accordingly omitted by Mr. Stephen in enumerating the commissions of the judges. 3 *Steph. Com.* 424, note (x).

COMMISSION OF BANKRUPT. A commission or authority formerly granted by the Lord Chancellor, in cases of bankruptcy, to such persons, (usually five,) as he should think proper, (who were thence styled commissioners of bankrupt,) authorizing them to proceed according to the statute against bankrupts. Instead of a commission, a *fiat* now issues by virtue of 1 & 2 Will. IV. c. 56, § 12; the commissioners constituting a permanent court. 2 *Steph. Com.* 199. See *Commissioners of bankrupt*.

COMMISSION TO EXAMINE WITNESSES. In practice. A commission issued out of, and under the seal of the court in which an action is pending, to obtain the testimony of persons not residing within the jurisdiction of the court, and whose personal attendance cannot be compelled by subpoena. It is directed to one or more individuals residing at the same place with the witnesses, authorizing them to take their testimony in writing and return it under seal, and in accordance with certain prescribed formalities, to the court which issued it. 2 *Tidd's Pr.* 810, 811. In England, a commission is also sometimes issued to take the testimony of witnesses within the jurisdiction of the court, as where a witness is going abroad, &c. *Id.* *ibid.*

COMMISSION OF LUNACY, (otherwise called a commission DE LUNATICO INQUIRENDO.) In equity practice. A commission issuing out of chancery, authorizing certain persons to *inquire* whether a person represented to be a *lunatic*, be so or not; in order that, if he or she be found a lunatic, their person or estate may be properly taken care of. 1 *Bl. Com.* 305. See old form of commission, *Reg. Jud.* Appendix, 19. This is usually done by committing the care of it to some suitable persons, called the lunatic's committee. 1 *Bl. Com. ub. sup.* 2 *Steph. Com.* 531. *Stock on Non Compotes Mentis*, 86—128. [2] *N. Y. Rev. St.* [52]. 1 *Id.* 813.

COMMISSION OF NISI PRIUS. In English law. One of the five [now four]

commissions by virtue of which the judges of the superior courts sit upon their circuits. It is a consequence of the [ancient] commission of assise (*supra*); being annexed to the offices of the justices by the statute of Westminster, 2, c. 30, and it empowers them to try all questions of fact issuing out of the courts of Westminster, that are then ripe for trial by jury. 3 *Bl. Com.* 58, 59. 3 *Steph. Com.* 424.

COMMISSION OF THE PEACE. In English law. A commission from the crown, appointing certain persons therein named, jointly and severally to keep the peace, &c. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 *Bl. Com.* 351. 3 *Steph. Com.* 39, 40.

COMMISSION OF REBELLION, (sometimes called a *writ of rebellion*.) In equity practice. A process formerly used in the court of chancery in England, being one in the series of what was called *process of contempt*. Where a defendant was in contempt, the order of this process was, 1. attachment; 2. attachment with proclamations; 3. commission of rebellion; 4. sending a sergeant-at-arms; and 5. sequestration. 3 *Bl. Com.* 443, 444. See *Contempt*. The commission of rebellion issued on the attachment with proclamations being returned *non est inventus*, and was directed to four commissioners, authorizing them to attach the party as a rebel and contemner of the laws, (*tanquam rebellis et legis nostræ contemptor*,) wherever he might be found in the kingdom, and bring, or cause him to be brought before the court on a day assigned. *Id. ibid. Termes de la Ley. Reg. Jud.* Appendix, 47. This process has, by order of 26th August, 1841, r. 6, been dispensed with. 4 *Steph. Com.* 20, note (d).

COMMISSION OF REVIEW. In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of delegates. 3 *Bl. Com.* 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. *Stat.* 2 & 3 Will. IV. c. 92. 3 & 4 Will. IV. c. 41, s. 3. 6 & 7 Vict. c. 38. 3 *Steph. Com.* 432.

COMMISSION OF SEQUESTRATION. See *Sequestration*.

COMMISSION OF SEWERS. In Eng-

lish law. A commission under the great seal, constituting the persons to whom it is directed a court of special jurisdiction under the name of *commissioners of sewers*, (q. v.) 3 *Bl. Com.* 73.

COMMISSION DAY. In English practice. The opening day of the assizes. *Wharton's Lex.*

COMMISSIONER. [L. Lat. *commissarius*.] A person holding a commission for the discharge of certain duties, as the execution of a public office.* *Cowell.* See *Commission*. A person holding a commission to take affidavits or depositions and the acknowledgments of deeds, is frequently simply termed a *commissioner*.

A person to whom a commission is directed, authorizing the performance of certain specific acts, as the examination of witnesses.* *Jacob.*

COMMISSIONERS OF SEWERS. In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones; and to cleanse such rivers, and the streams communicating therewith. *Stat.* 3 & 4 *Will.* IV. c. 22, s. 10. 3 *Steph. Com.* 442, and note (r). *Crabb's Hist. Eng. Law*, 469. The word *sewer* is used in this phrase in the sense of a trench, ditch or channel for draining marshy lands, and carrying water into the sea, as well as in that of a natural water-course. See *Sewer*.

Commissioners of sewers have sometimes been appointed in the United States, to remove obstructions and regulate the flow of water in creeks and rivers. See 7 *Pick. R.* 207.

COMMISSIONERS OF BANKRUPT. In English law. Commissioners appointed under the great seal, and whose duties are, to take proof of the petitioning creditor's debt, the trading and act of bankruptcy, to examine the bankrupt in all matters relating to his trade and effects, assign his property to assignees, and to perform various other important duties connected with bankruptcy matters. 1 *Bl. Com.* 480—486. *Eden's Bankrupt Law*, 79, and *passim*.

These commissioners now compose permanent courts of bankruptcy. *Stat.* 1 & 2 *Will.* IV. c. 56; 5 & 6 *Will.* IV. c. 29, s. 21; 5 & 6 *Vict.* c. 122. 2 *Steph. Com.* 199, 200. 3 *Id.* 425, 426.

COMMISSOR. L. Lat. [from *committere*, q. v.] In old English law. A committer; one who committed or entrusted land to another to hold during his pleasure. *Fleta*, lib. 5, c. 5, § 18.

COMMISSORIA LEX. See *Lex commissoria*.

COMMIT. [Lat. *committere*; L. Fr. *comaunder*.] In practice. To send a person to prison for any crime or contempt.* 4 *Bl. Com.* 295, 300. 1 *Tidd's Pr.* 479, 481.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 *Tidd's Pr.* 285, 287.

COMMITMENT. In practice. The sending or committing a person to prison or gaol, by warrant or order, either for a crime, contempt, or contumacy.* 4 *Bl. Com.* 296, 300. 3 *Steph. Com.* 364, 367.

The delivery of a defendant to the custody of a sheriff or marshal, on his surrender by his bail. 1 *Tidd's Pr.* 286, 289. See *Committitur*.

A part of the process of charging a defendant in execution. *Id.* 364, 365.

The warrant or order by which a party is committed.* Sometimes termed a *mitimus*. See *United States Digest*, Commitment.

COMMITTEE. In practice. One or more individuals to whom the consideration or management of any matter is committed or referred by some court, or by consent of parties to whom it belongs.* *Termes de la Ley.* *Cowell.* The committee of a lunatic, idiot, &c. is the person to whom the care and custody of the person or estate of such lunatic is committed by the court of chancery. 1 *Bl. Com.* 305.

COMMITTERE. Lat. In old English law. To commit; to entrust or put in charge. *Terra committetur duobus legalibus et discretis hominibus*; the land shall be committed to two lawful and discreet men. *Mag. Cart. Joh.* c. 4.

To commit, or be guilty of. *Committitur jurator perjurium, quando*, &c. the juror commits perjury, when, &c. *Fleta*, lib. 5, c. 22, § 9.

To send to; to send to prison or into custody. See *Committitur*.

COMMITTITUR. Lat. (He is committed—from *committere*, to commit.) In practice. An order or minute, setting forth that the person named in it is committed to the custody of the sheriff. Most commonly used on the surrender of a defendant by

his bail, in which cases it is a minute of the render and commitment. 1 *Tidd's Pr.* 285. 10 *East*, 47.

COMMITTITUR PIECE. In English practice. An instrument in the form of a bail-piece, by which a defendant already in custody is charged in execution, at the suit of the same or another plaintiff. 1 *Tidd's Pr.* 363, 364.

COMMIXTIO. Lat. [from *commisceri*, to mix together.] In the civil law. Commixture or commixtion; a mixing together of things solid or dry, (as *confusio* is of things liquid,) which belong to different owners. *Inst.* 2. 1. 28. 27. 1 *Mackelvey's Civ. Law*, 285, § 270. One of the modes of acquiring property in goods. See *Confusio*.

COMMODARE. Lat. In the civil law. to loan or lend; to give a thing to another to be used. *Inst.* 3. 14. [15]. 2. *Dig.* 13. 6.

COMMODATE. In Scotch law. A gratuitous loan for use. *Ersk. Inst.* b. 3, tit. 1, § 20. Closely formed from the Lat. *commodatum*, (q. v.)

COMMODATOR. Lat. [from *commodare*, to lend.] In the civil law. A, or the lender, as distinguished from him to whom a thing is loaned, (*cui commodata res est*.) *Inst.* 4. 1. 16.

COMMODATUM. Lat. [from *commodare*, to lend.] In the civil law. A thing loaned, (*res commodata*.) *Dig.* 13. 6. 1. 1. *Bract.* fol. 99 b.

The contract by, or upon which a thing is loaned; a loan for use without pay. A bailment of a thing, or of goods, to be used by the bailee for his own benefit, (*ad commodum*), temporarily, or for a certain time, without reward, (*nulla mercede accepta vel constituta*), and then to be identically returned to the lender.* *Inst.* 3. 15. [14]. 2. *Dig.* 13. 6. *Bract.* fol. 99 b. *Fleta*, lib. 2, c. 56, § 6. 2 *Kent's Com.* 573, 574. *Story on Bailment*, § 6. Called in Scotch law, *commodate*; a term which Mr. Justice Story regrets has not been introduced into the English law of bailment. *Ersk. Inst.* b. 3, tit. 1, § 20. 1 *Bell's Com.* [197.] 295. *Story on Bailm.* § 221.

COMMODATI ACTIO. Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned, (*commodatum*) and not returned to the lender. *Inst.* 3. 15. 2. *Id.* 4. 1. 16. *Dig.* 13. 6. *Cod.* 4. 23.

COMMODUM. Lat. Advantage, benefit or profit. *Commodum ex injuria sua nemo habere debet.* No man ought to have advantage [to derive benefit] from his own wrong. *Jenk. Cent.* 161. No man shall take a benefit of his own wrong. *Finck's Law*, b. 1, c. 3, num. 62. *Un ne doit prise avantage de son tort demesne.* 2 *And.* 38, 40. See *Nemo ex suo delicto, &c.*

Cujus est commodum, ejus debet esse incommodum. Whose the advantage is, his ought the disadvantage to be. He who has the benefit of a thing, ought also to be subject to the disadvantage of it. 1 *Kames' Equity*, 289. This maxim is more frequently expressed in the hexameter line,

Qui sentit commodum, sentire debet et onus.

Secundum naturam est commodum cujusque rei cum sequi quem sequuntur incommoda. It is according to nature, that the advantages of a thing should follow him who is to be subject to its disadvantages. *Dig.* 50. 17. 10. This maxim of the civil law embodies the converse of the preceding, and is applied by Bracton in the following passage: *Ipsam sequi debent commodum quem sequuntur incommoda, et commodum ejus esse debet cuius est periculum*; the advantages [attending a sale before delivery] ought to attach to him who is subject to the disadvantages; and the benefit [arising from an accidental increase of value during that interval] ought to be his who takes the risk [of loss during the same interval] *Bract.* fol. 62. *Fleta*, lib. 2, c. 58, § 8.

COMMON. [Lat. *communis*.] Bracton distinguishes between common and public. *Publica ita accipiuntur quæ sunt omnium populorum, i. quæ spectant ad usum hominum tantum.* *Communia vero dici poterunt aliquando quæ sunt omnium animalium.* Public things are understood to mean those which belong to all people, that is, with reference to the use of men only. Common things may be defined to be those which belong to all living creatures. *Bract.* fol. 8. But see 6 *Mod.* 256.

COMMON. [L. Fr. *comon*, *comen*, *comun*; L. Lat. *communia*, q. v.] A profit which a man hath in the land of another; as to feed his beasts, to catch fish, to dig turf, to cut wood, or the like. 2 *Bl. Com.* 32. 2 *Steph. Com.* 3.—A right or privilege which one or more persons claim, to take or use some part of that which another man's lands, waters, woods, &c. naturally produce, without having an absolute pro-

perty in such lands, waters, woods, &c. 1 *Crabb's Real Prop.* 257, 258, § 268.—A privilege which a man may enjoy, of taking a profit, in *common* with many, in the land of another, as to feed his beasts, &c. *Roscoe's Real Act.* 366.—A right of taking a profit in the land of another, in *common* either with the owner or with other persons.* The radical meaning of the term *common*, in all its applications, is—something enjoyed by *more than one* person; properly, by *many* together. *Co. Litt.* 122 a. *Savage, C. J.* 10 *Wendell's R.* 639, 647. *Fleta* calls it a servitude. *Fleta*, lib. 4, c. 18, § 3.

Common, in English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 *Co.* 37. 1 *Crabb's Real Prop.* 258, § 268. It is chiefly of four sorts; common of *pasture*, of *piscary*, of *turbary*, and of *estovers*, (qq. v.) "The ancient books," it has been said, "are more explicit on rights of common than the modern; probably on account of the great increase of inclosures." *De Grey, C. J.* 2 *W. Bl.* 818.

Common is little known or used in this country, and probably does not exist in any of the northern or western parts of the United States which have been settled since the revolution. 3 *Kent's Com.* 404. But see the Constitution of Illinois, (1818,) art. 8, sect. 8. The term, however, is frequently used to denote a space or tract of ground in a town or other municipal district, set apart for the public use of the inhabitants. 2 *Hilliard's Real Prop.* 77. See *United States Digest*, Common.

As to the etymology of the word, the Lat. *communis* is derived by Bracton from *cum*, with, and *una*, together, or by transposition, from *una*, and *cum*, the word *alio* (another) or *aliis* (others) being understood. *Bract.* fol. 208, 222. Whatever may be said of the correctness of this derivation, it serves to show with great force the original meaning of the term, as deriving its name from the *community* of interest which arises between the claimant of the right and the owner of the soil, or between the claimant and other commoners entitled to the same right. 2 *Steph. Com.* 3. Lord Coke says it is so called because it is *common* to many. *Co. Litt.* 122 a. Cowell applies the term

to the land or water itself of which the use is common to this or that town, &c. And hence, no doubt, the popular meaning of *common*, as a waste or unenclosed ground; that having been the kind of ground originally subject to the right. 2 *Steph. Com.* 4. See 10 *Mod.* 185.

COMMON OF PASTURE. [L. Lat. *communis pasturæ*; L. Fr. *commune de pasture*.] The right of feeding one's beasts on another's land, in common with the owner, or with other persons.* 2 *Bl. Com.* 32. 2 *Steph. Com.* 4. *Savage, C. J.* 10 *Wendell's R.* 647. Called, in Scotch law, "common pasturage." *Bell's Dict.* It is of four sorts, *appendant*, *appurtenant*, *because of vicinage*, and *in gross*. 2 *Bl. Com.* 32. *Co. Litt.* 122 a.

COMMON APPENDANT. [L. Lat. *communis pertinens*.] A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. *Savage, C. J.* 10 *Wendell's R.* 648. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. 1 *Crabb's Real Prop.* 258, § 269. This kind of common arises from the connexion of tenure, and is of common right; it must have existed from time immemorial and cannot now be created; it is regularly appendant to arable land only, and can be claimed for no beasts but such as are commonable, that is, beasts of the plough, such as horses or oxen, or such as manure the ground, as kine or sheep. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. 4 *Co.* 37. 1 *Crabb's Real Prop.* 258—264, §§ 268—276. *Roscoe's Real Act.* 367. 3 *Kent's Com.* 404. *Savage, C. J.* 10 *Wendell's R.* 648.

COMMON APPURTENANT. A right of feeding one's beasts on the land of another, [in common with the owner or with others,] which is founded on a grant, or a prescription which supposes a grant. 1 *Crabb's Real Prop.* 264, § 277. This kind of common arises from no connexion of tenure, and is against common right; it may commence by grant within time of memory, or, in other words, may be created at the present day; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 *Bl. Com.* 33. *Co. Litt.* 121 b, 122 a. 4 *Co.* 37, 38. *Cro. Car.* 482. 1 *Crabb's Real Prop.* 254—268, §§ 277—283. *Roscoe's Real Act.*

368. 3 *Kent's Com.* 404. *Savage, C. J.* 10 *Wendell's R.* 648. 'See 25 *Penn. St. R.* 161.

COMMON BECAUSE OF VICINAGE, or NEIGHBORHOOD [L. Fr. *comun pur cause de vicinage*; L. Lat. *communiaz causa vicinitatis*,] Is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. This is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may enclose and bar out the other, though they have intercommoned time out of mind. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. *Bract.* fol. 222. This kind of common can be only for cattle *levant et couchant* upon the lands to which it is annexed, (7 *Co.* 5; but see 5 *Taunt.* 244); and it must be used with commonable cattle. 7 *Co.* 5. 1 *Crabb's Real Prop.* 271—273, §§ 290—292. *Roscoe's Real Act.* 369.

Dr. Wooddesson observes that Blackstone's account of common *pur cause de vicinage* is not properly a definition, but rather a descriptive example or illustration, there being other occasions when the excuse for trespass may be used. 2 *Wooddes. Lect.* 50.

COMMON OF SHACK. A species of common by vicinage, prevailing in the counties of Norfolk, Lincoln and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in that field. 2 *Steph. Com.* 6. 7 *Co.* 5, 65. 1 *B. & Ald.* 710. 1 *Crabb's Real Prop.* 273, § 293.

COMMON IN GROSS, or AT LARGE. A species of common which is neither appendant nor appurtenant to *land*, but is annexed to a man's *person*, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 *Bl. Com.* 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 *Steph. Com.* 6. 1 *Crabb's Real Prop.* 268, § 284. *Roscoe's Real Act.* 369.

COMMON SANS NOMBRE. L. Fr. [L. Lat. *communiaz sine numero*.] Com-

mon without number; that is, without limit as to the number of cattle which may be turned on; otherwise called, common without stint. *Bract.* fol. 53 b, 222 b. 2 *Steph. Com.* 6, 7. 2 *Bl. Com.* 34. 3 *Id.* 238, 239. 2 *Wils.* 274. 2 *Wooddes. Lect.* 49.

It has been denied in some of the cases in England, that this kind of common can now exist. *Willes*, 232. 1 *Saund.* 348. The better opinion seems, however, to be, that it may exist as a species of common in gross, if granted to an individual, but that a corporation cannot prescribe for it. This is the opinion of Mr. Crabb and Mr. Stephen. 1 *Crabb's Real Prop.* 269, 270, § 287. 2 *Steph. Com.* 7, and note (b). Dr. Wooddesson remarks upon the phrase *common without stint*, as loosely used by Blackstone. 2 *Bl. Com.* 34. 2 *Wooddes. Lect.* 49. It is, however, more clearly explained by the same author in another place. 3 *Bl. Com.* 238, 239.

COMMON OF PISCARY, or FISHERY. [L. Lat. *communiaz piscaria*.] The right or liberty of fishing in another man's water, [in common with the owner or with other persons]. 2 *Bl. Com.* 84. *Dallas*, J. 8 *Taunt.* 187. 1 *Crabb's Real Prop.* 280, § 304. *Schultes' Aquatic Rights*, 25. —A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. 3 *Kent's Com.* 409. It is quite different from a common fishery, (*communis piscaria*), with which, however, it is frequently confounded by the text writers. 8 *Taunt.* 183. *Schultes' Aquatic Rights*, 60, et seq. See *Common fishery*.

COMMON OF TURBARY. [L. Lat. *communiaz turbaria*.] A liberty of digging turf upon another man's ground, [in common with the owner, or with other persons]. 2 *Chitty's Bl. Com.* 34, and note. *Co. Litt.* 122. 2 *Steph. Com.* 9. It may be either by grant or prescription, and may be either appurtenant or in gross, but it is usually claimed as appurtenant and by prescription. *Id. ibid.* 9, 10. It cannot, however, be claimed as appurtenant to land, but only to a house. 4 *Co.* 37 a. And it authorizes not the taking of turf, except for the purpose of using it as fuel in the particular house to which the right is annexed. *Noy.* 145. 2 *Steph. Com.* 10. 1 *Crabb's Real Prop.* 278, § 306, et seq. See *Turbary*.

COMMON OF ESTOVERS. A liberty of taking necessary wood for the use or furniture of a house or farm, from off another's

estate, [in common with the owner or with others]. 2 *Bl. Com.* 35. It may be claimed, like common of pasture, either by grant or prescription. 2 *Steph. Com.* 10. 1 *Crabb's Real Prop.* 274, § 29, *et seq.* 3 *Kent's Com.* 404. 10 *Wendell's R.* 639.

This right is not to be confounded (although it sometimes is) with the right of a tenant or lessee to take estovers from off the land let or demised to him. 2 *Steph. Com.* 10. 2 *Chitty's Bl. Com.* 35, note. See *Estovers*.

COMMON ASSURANCES. The several modes or instruments of conveyance established or authorized by the law of England. Called *common*, because thereby every man's estate is assured to him. 2 *Bl. Com.* 294. See *Assurance*. Sheppard's celebrated treatise on the law of conveyance is called the "Touchstone of common assurances."

COMMON BAIL. In practice. A species of bail intended only to express the appearance of a defendant in cases where special bail is not required. See *Bail, Common*.

COMMON BAR. In pleading. A plea in an action of trespass, otherwise called *blank bar*. See *Blank bar*.

COMMON BARRETOR. In criminal law. One who frequently excites and stirs up suits and quarrels, either at law or otherwise. See *Barretor, Barretry*.

COMMON BENCH. [L. Lat. *communis bancus*; L. Fr. *le commun banke*.] The former title of the English court of Common Pleas, and still sometimes used in the reports. Its original title seems to have been simply "The Bench;" the epithet "*common*" being added probably to distinguish it from the King's or Queen's Bench, as being originally established for the trial of *common* causes, (*communia placita*), or controversies between *common* persons, that is, between subject and subject. 1 *Reeves' Hist. Eng. Law*, 57, 58. 3 *Bl. Com.* 37—40. *Camd. Brit.* 113. 8 *Co. pref.* Called also the court of "the Bench at Westminster." 3 *M. & S.* 166. From the language of *Magna Charta*, (c. 11,) it is generally supposed to have been a stationary court, held permanently at Westminster. But this was not uniformly the case, at least as early as the reign of Edward III. In a case in Michaelmas Term, (*Yearb.* 7 *Edw. III.* 47,) it is said, "The C. B. is not in a certain place, but in divers places at the will of the king." So in *H. 8 Edw. III.* 47,

it is said, "the C. B. is not in a certain place, but sometimes here, (*un foits icy*), at other times at London, changing at the will of the king." See *Bench, Bancus, Common Pleas, Court of*.

COMMON CARRIER. A person who carries the goods of others for hire. One who undertakes for hire, to carry for any who choose to employ him. 1 *Smith's Leading Cases*, (Am. ed.) 104. 4 *N. Hamp. R.* 304. 1 *Pick. R.* 50. Common carriers are of two kinds; by *land*, as owners of stages, stage-wagons, rail-road cars, teamsters, cartmen, draymen and porters; and by *water*, as owners of ships, steamboats, barges, ferrymen, lightermen, and canal boatmen. 2 *Kent's Com.* 589, *et seq.* 1 *Smith's L. Cas. ub. sup.*

The term *common*, as applied to a carrier, would seem, *ex vi termini*, to imply the carrying to be a *common* or public employment, or one undertaken as a *business*, in contradistinction to carrying on a particular occasion, or for particular persons. *Story on Bailm.* § 495. See 2 *Kelly's (Geo.) R.* 349. The rule of law, however, seems to be settled, that any one who undertakes, though only *pro hac vice*, to carry for hire, without a special contract, assumes the character and thereby incurs the responsibility of a common carrier. 1 *Smith's Lead. Cas.* 104. 1 *Watts' & Serg. R.* 285, there cited. 2 *Kent's Com.* 597, and note. See *Angell on Carriers*.

COMMON CHASE. [L. Fr. *comon chace*.] In old English law. A place where the right of hunting wild animals, (*touts beasts chaceables*), was common to all, (*à toutz gents*). *Yearb.* P. 10 *Edw. III.* 28.

COMMON COUNCIL. [L. Lat. *commune concilium*.] The representative body of a corporation, in which is vested the power of making its laws and administering its affairs.* According to Lord Holt, a common council is incident to all corporations of common right, unless it be otherwise provided by the patent of creation. 1 *Ld. Raym.* 226. One of the ancient names of the English parliament was "the common council of the realm," (*commune concilium regni*). 1 *Bl. Com.* 148.

COMMON COUNTS. In pleading. Counts of invariable form, framed upon certain general principles of statement, and therefore *common* in their application to a great variety of actions; as distinguished from *special* counts, which are adapted to the special circumstances of each particular

case, and are peculiar to the individual actions in which they are employed.* In other words, they are general forms of pecuniary demand, founded on express or implied promises, to pay money in consideration of a precedent or existing debt. 1 *Chitt. Pl.* 273. Their principal use is to sustain the plaintiff on the trial of a cause, in the event of a failure to prove his case as stated in the special counts of his declaration. *Steph. Pl.* 287, (Am. ed. 1824.) 1 *Burr. Pr.* 130, note. They are most frequently employed in claims for goods sold, work done, money lent, money paid, money had and received, and money due on an account stated, (which last are commonly called the *money counts*,) and sometimes without any special counts. See *Indebitatus assumpsit*, *Quantum meruit*, *Quantum valebant*, *Insimul computassent*. In England, since the Pleading Rules of Hil. T. 2 Will. IV. the importance of these counts has been considerably diminished, and in some cases they can no longer be resorted to. 1 *Chitt. Pl.* 339—359, (Perkins' ed. 1847).

COMMON DAY. [L. Lat. *dies communis*.] In old English practice. An ordinary day in court. *Stat. 13 Ric. II. st. 1, c. 17*. Such as *Octabis Michaelis*, (the octave of St. Michael,) *Quindena Paschæ*, (the Quinzime of Easter,) &c. *Stat. 51 Hen. III. st. 2 & 3. Cowell. Termes de la Ley.* See *Dies communis*.

COMMON DEBTOR. In Scotch law. A debtor whose effects have been arrested by several creditors. In regard to these creditors, he is their common debtor, and by this term is distinguished in the proceedings that take place in the competition. *Bell's Dict.*

COMMON ERROR. [Lat. *communis error*, q. v.] An error for which there are many precedents. "Common error goeth for a law." *Finch's Law*, b. 1, c. 3, num. 54.

COMMON FINE. [L. Lat. *finis communis*.] In old English law. A certain sum of money which the residents in a leet paid to the lord of the leet, otherwise called head silver, cert money, (q. v.) or *certum letæ*. *Termes de la Ley. Cowell.*—A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. *Bailey's Dict.* See *Leet*.

A fine or amercement imposed upon a county at large. *Bract. fol. 36 b. Stat. Westm. 1, c. 18. Fleta*, lib. 3, c. 14, § 9. 2 *Inst.* 197.

COMMON FISHERY. [L. Lat. *communis piscaria*.] A right of fishing common to all, as a fishery in the sea, or in a navigable river. 1 *Crabb's Real Prop.* 114, § 108. This is sometimes confounded with *common of fishery*, and *free fishery*, from both of which, however, it is clearly distinguishable. *Id. ibid.* 3 *Kent's Com.* 409—411. Dallas, J. 8 *Taunt.* 187. See *Common of fishery*, *Fishery*, *Free fishery*.

COMMON INFORMER. One who habitually gives, or makes a business of giving information of the violation of any penal statute, with a view to the prosecution of the offender, and to whom the whole or a part of the forfeiture is given.* 3 *Bl. Com.* 160. *Crabb's Hist. Eng. Law*, 509. See *Informers*.

COMMON INTENDMENT. Common meaning or understanding; the understanding of a thing according to the subject-matter, without straining it to any extraordinary or foreign sense. *Co. Litt.* 78, 303. *Termes de la Ley. Cowell. Blount.* See *Intendment*.

COMMON JURY. In practice. The ordinary kind of jury by which issues of fact are generally tried, as distinguished from a *special jury*, (q. v.)

COMMON LAW. [L. Lat. *Lex communis*, *Jus commune*; L. Fr. *comen ley*, *comon droit*.] The whole body of the law of England, as distinguished from the civil and canon laws; called also *Lex Angliæ* and *Lex terræ*, to distinguish it from systems of foreign origin. *Termes de la Ley.* 1 *Wooddes. Lect. Introd.* lxxxi. *Hale's Hist. Com. Law*, ch. 3. In this sense, it comprehends statute law, (*Co. Litt.* 115 b,) and is termed by Spelman *jus civile Anglorum*, (the civil law of the English.) Spelman, voc. *Jus commune*. See *Civil law*. Lord Coke calls *Magna Charta*, the *Charta de Foresta*, the ancient statutes of Merton, Marlbridge, Westminster the first, *De bigamis*, Gloucester, Westminster the second, *Articuli super Chartas*, *Articuli Cleri*, the statute of York, *Prærogativa Regis*, and some few others, together with the original writs in the Register, "the very body, and, as it were, the very text of the common law of England," of which the year books and records are but commentaries and expositions. 8 *Co. pref.* *Magna Charta* is called the common law, in the *Confirmatio Chartarum*, 25 Edw. I.

That branch of the law of England which does not owe its origin to parliamentary enactment; otherwise called, with reference

to its origin, *lex non scripta*, (the unwritten law,) as distinguished from statute law, or the *lex scripta*: being a collection of customs, rules and maxims, which have acquired the force of law by immemorial usage, recognized and declared by judicial decisions, and the best evidence of which is to be found in the reports of such decisions, and in the standard treatises and abridgments.* 1 *Bl. Com.* 67—73. 1 *Steph. Com.* 10, 45, 49, 52. 1 *Wooddes. Lect. Introd.* lxxxi. Lord Bacon places the common law, in point of worthiness, above the statute law. *Works*, iv. 326. See *Lex non scripta, Consuetudo Anglicana*.

The general customs of the kingdom, as distinguished from the local customs of particular places. 1 *Bl. Com.* 67, 74. 1 *Wooddes. Lect. ub. sup.* See *Fleta*, lib. 2, c. 2, § 13.

That system of law which is administered in the common law courts, as distinguished from the rules prevailing in courts of equity and admiralty. 1 *Wooddes. Lect. ibid.*

In American jurisprudence, the term "*common law*" is chiefly used in the second and last of the foregoing senses; that is, in contradistinction, on the one hand, to the statute law, and on the other, to equity and admiralty and maritime jurisprudence. Story, J. 6 *Peters' R.* 102, 110. 1 *Kent's Com.* 471. Story, J. 3 *Peters' R.* 446, 447. It is, however, occasionally used to denote statute law also, as where it is said that the English statutes passed before the emigration of our ancestors, being applicable to our situation, and in amendment of the law, constitute a part of our common law. Story, J. 5 *Peters' R.* 232, 241.

The common law is the common jurisprudence of the people of the United States, and was brought with them as colonists from England, and established here, so far as it was adapted to our institutions and circumstances. 1 *Kent's Com.* 342, 343. Story, J. 2 *Peters' R.* 137, 144. To that extent, it has been recognized and adopted as one entire system, by the constitutions of some of the states; and it has been assumed by the courts, or declared by statute, with the like modifications, as the law of the land in every state. 1 *Kent's Com.* 472. Thus it is said that, in the absence of all proof to the contrary, the English common law, when consistent with our institutions, will be presumed to be the rule of decision in a sister state. 6 *Alabama R.* 631. 25 *Id.* 540. 4 *Blackford's R.*

89. 15 *Illinois R.* 263. But to what extent the common law has been adopted in the *federal* jurisprudence of the United States, does not seem to be settled. It has indeed been expressly held, that there can be no common law of the United States, and that the common law of England is not in force in the United States as a federal government. McLean, J. 8 *Peters' R.* 658. Blackford, J. 1 *Blackf. R.* 205. According to other authority, the constitution and laws of the United States are predicated upon the existence of the common law, and that law is appealed to by the constitution, for the construction and interpretation of its powers. Story, J. 1 *Gallison's R.* 488, 489, 520. See 3 *Wheaton's R.* 223. 1 *Gallison's R.* 20. 1 *Kent's Com.* 338, 339. *United States Digest, Common Law.*

* * The Latin *jus commune*, which may be rendered "common law," occurs in the Roman law, at the very commencement of the Institutes and Digests. *Inst.* 1. 2. 1. *Dig.* 1. 1. 9. But it is obviously used in the sense of *natural* law, *common* to all men. The *κοινὸς νόμος* of the Greeks had the same signification. *Arist. Rhet.* I. 14. *Tayl. Civ. Law*, 100. The expression *κοινὸς νόμος* occurs in the seventy-ninth Novel, c. 2, in the more limited sense of "a common law" or rule for the whole empire. But the term "*Common law*," as used in English jurisprudence, is generally agreed to be of English origin, being by some writers supposed to be a translation of the Saxon *folcright*, or *folcrichte*, (q. v.) mentioned in the laws of King Edward the Elder, expressing the same *equal right*, law or justice due to persons of all degrees. 1 *Wooddes. Lect.* lxxxi. *Lambard, apud Spelman*, voc. *Jus Commune*. 1 *Bl. Com.* 65, 67. Lord Mansfield, C. J. 4 *Burr.* 2343. Spelman, however, considers it as applied, for the first time, to that body of laws compiled by King Edward the Confessor, (or St. Edward, as he is otherwise styled,) from the three systems which had previously prevailed in different districts of England, viz. the Mercen lage, West Saxon lage, and Dane lage; denoting, by way of distinction from these, a *law common to all the realm*. *Spelman*, voc. *Lex Anglorum*. *Ranulph. Cestriens.* lib. 1, c. 50, cited *ibid.* 1 *Bl. Com.* 67. Sir Matthew Hale adopts the opinion that it is called the *common law*, because it is the common municipal law or rule of justice

in the kingdom. *Hale's Hist. Com. Law*, ch. 3. Lord Coke observes that the common law is sometimes called *right*, (as in *Magna Charta*.) sometimes *common right*, and sometimes *common justice*. *Co. Litt.* 142 a.

The term *common law* has also been applied to the judicial systems of other nations, such as the Lombards and the Romans of the lower ages. *Spelman*, voc. *Jus commune*. The *land's lagh* of Sweden has been considered of nearly equivalent meaning. 1 *Bl. Com.* 66. The Spanish *fuero*, (q. v.) was a kind of common law. The term *common law* is used in Germany, to denote the subsidiary law common to the several German states, in opposition to the laws of the individual states. Its constituent parts are the German law, the Roman law, the Canon law, and the Lombard feudal law. 1 *Mackeld. Civ. Law*, 83, § 94, Kaufmann's note. In Scotland, the term *common law* is used by many writers, and in some acts of parliament, to signify the Roman law. But, in its proper acceptation, it refers to the ancient usages of the kingdom, founded on the feudal customs and the unwritten laws. *Bell's Dict.* The civil law is sometimes called the common law (*derecho comun*) of Spain. *White's New Recop.* b. 2, tit. 13, ch. 1, § 5.

As to the origin of the common law itself, various opinions have been entertained by the best writers. Sir William Blackstone, following Lord Coke and Sir Matthew Hale, treats it as being essentially of Saxon origin, its ultimate sources having existed (though not now distinguishable,) in the various local customs and usages which prevailed among the aboriginal Britons, or were introduced by the invading Romans, Saxons and Danes, while they successively bore sway or maintained a footing on the island. 1 *Bl. Com.* 64—67. Mr. Stephen is of opinion that the ancient law of Normandy has a claim to be considered another parent of the common law, and one from which it has inherited some of its most remarkable features. 1 *Steph. Com.* 44. And see *Bacon's Works*, iv. 365. Mr. Hallam inclines to ascribe the present common law to a date not much antecedent to the publication of Glanville, though he admits some features of it to have been distinguishable in Saxon times. 2 *Hallam's Mid. Ages*, 466—468. Mr. Spence descends still lower, and fixes the origin of the common law about the period of the composition of the works of Glanville and

Bracton, and the treatises of Britton, Fleta and Thornton, founded upon them, strongly advocating the opinion that it was made up, to a very great extent, of materials derived from the *Roman law*. 1 *Spence's Chancery*, 119—127. A principal argument relied on in support of this view, is the peculiar character of the important work of Bracton; Mr. Spence contending not only that that writer borrowed more largely from the *Corpus Juris* than his direct references appear to indicate, but also that what he did adopt was used not for the mere purpose of illustration, but because it was considered to be *the law* of the time. *Id.* 123—127, 132. This whole view, however, together with the arguments in its support, seems to have been long since met and refuted by Selden. *Diss. ad Fletam*, ch. 7, sect. 7. *Id.* ch. 8, sect. 1. *Id.* ch. 9, sect. 1. Indeed, the observation of Bracton himself, on the first page of his work, that the law of England, which he proposed to illustrate, was an *unwritten law*, composed, in a great degree, of *customs*, which *differed in different places*, while it tends to support the opinion of Blackstone and the older writers before alluded to, seems wholly at variance with Mr. Spence's idea that the old local and customary laws had then been abrogated, and a new system introduced. 1 *Spence's Chancery*, 125, 122. As an evidence of the extent to which the last named writer has carried his theory, it may be observed, that among the doctrines and regulations of the common law referred by him to a Roman original, are the doctrine of entails, the modes of conveyance by fine and recovery, the formality of livery of seisin, the proceeding by inquest of office, the terms and vacations of the courts, imparlances and essoins in actions, several of the old real actions, together with much of the system of special pleading; and even the feudal system is traced to the Roman relation of patron and client. *Id.* 21, 36, 139, 142, 143, 178, 225, 229, 235, 280, note (c).

COMMON LAWYER. A lawyer learned in the common law. 1 *Rep. in Ch.* pref. "Doubtless a good common lawyer is the best expositor of such clauses." *Hale's Hist. Com. Law*, 91.

COMMON LEARNING. [*L. Fr. common erudicion.*] Familiar law or doctrine. *Dyer*, 27 b, 33.

COMMON NUISANCE. [*L. Lat. commune nocumentum.*] A nuisance affecting

the public, being an annoyance to the whole community in general; as distinguished from a private nuisance, which is confined in its effects to particular individuals.* 3 *Bl. Com.* 215. *Id.* 5. 4 *Id.* 167. 4 *Steph. Com.* 294. The obstructing of highways, bridges and public rivers, and the carrying on of offensive or dangerous trades or manufactures, are examples of common nuisances. See *Nuisance*.

COMMON PLACE. Common pleas. The English court of Common Pleas is sometimes so called in the old books. *Litt. sect.* 94. *Termes de la Ley*, voc. *Common law*. *Finch's Law*, b. 4, ch. 1, pp. 238, 240.

COMMON PLEAS. [*L. Lat. communia placita*; *L. Fr. communes plees*.] Common causes or suits. A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown*, (q. v.) 3 *Bl. Com.* 38, 40. *Britt.* fol. 2 b. *Gilb. C. Pleas*, 1. Common pleas shall not follow our court, but shall be held in some certain place. *Mag. Cart.* 2 Hen. III. c. 11. See *Communia placita*, *Placitum*.

The singular "common plea" is sometimes used in the old books. *Nul common plee ne soit desormes tenu a leschequer.* *Artic. sup. Chart.* c. 4.

COMMON PLEAS, Court of. [*L. Lat. bancus, bancus communis, communia placita*.] One of the superior courts of common law in England, consisting of a chief justice and four puisne judges; supposed by some writers to have been first established as a permanent court by Magna Charta, and now constantly held in Westminster Hall; called also anciently, and still sometimes technically, the court of *Common Bench*, (q. v.) 3 *Bl. Com.* 37—40. 3 *Steph. Com.* 402. *Termes de la Ley*. *Gilb. C. Pleas*, *Introd.* 31. Lord Coke supposes it to have existed before Magna Charta, and quotes, in support of this opinion, not only Glanville, but the twelfth and thirteenth chapters of Magna Charta itself, where mention is made of the justices of the bench, (*de banco*), [the ancient title of this court,] as of a court already established. *Glanv.* lib. 2, c. 6. 2 *Inst.* 22. 1 *Reeves' Hist. Eng. Law*, 57, 58. 8 *Co. pref. Id.* 289. See *Bancus, Bench*. The title of "Common Pleas" (*communis placita*), may, however, have been derived from the eleventh chapter of the Charter.

This court has always exercised an exclusive jurisdiction over real actions, and

has been considered as the principal seat of the learning relative to ordinary actions between man and man, (or *common pleas*, as they were anciently denominated). Hence it is styled by Lord Coke "the lock and key of the common law." 4 *Inst.* 99. 3 *Bl. Com.* 40. 3 *Steph. Com.* 402. Its practice seems to have been, from a very ancient period, monopolized by a class of advocates termed *serjeant counters*, or counters of the bench, (*banci narratores*, qq. v.); and the same exclusive privilege has been enjoyed by the modern serjeants at law, during term time, down to the year 1834, when the court was suddenly opened to the whole profession by royal warrant, the validity of which, however, was, after an acquiescence of five years, successfully impeached by the serjeants, and in 1840 the court was closed. Recently, however, this privilege has been abolished by statute, and the court permanently thrown open to the English bar generally. 3 *Man. Gr. & Scott*, 537.

COMMON RECOVERY. In conveying. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England, but recently abolished by statute 3 & 4 Will. IV. c. 74. 2 *Bl. Com.* 357. 1 *Steph. Com.* 530. It was in the nature and form of an action at law, carried regularly through, [in which respect it differed from a *fine*, which was in the form of a suit *compromised*,] and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee simple in the recoveror. 2 *Bl. Com.* 357. 1 *Steph. Com.* 524. It was called a *common recovery*, to distinguish it from a real adjudication. *Id. ibid.* 5 *Cruise Dig.* 269.

* * * Common or feigned recoveries were first invented or introduced by the clergy, in order to evade the statute of mortmain. 2 *Bl. Com.* 271. 2 *Reeves' Hist. Eng. Law*, 155. See *Mortmain*. To effect this purpose, the religious houses used to set up a fictitious title to the land which it was intended they should have, and brought an action to recover it against the tenant, who by fraud and collusion made no defence, and thereby judgment was given for the religious house, which then recovered the land by sentence of law upon a supposed prior title. 2 *Bl. Com.* 271. These common recoveries were afterwards em-

ployed as a contrivance to elude the statute *De Donis*, and as a means of barring estates tail, and becoming on this account more and more general, they were finally recognized as a regular mode of conveyance; retaining at the same time, however, all the forms of a judicial proceeding as they had when they were real actions. *Crabb's Hist. Eng. Law*, 390, 541. 2 *Bl. Com.* 117. 1 *Steph. Com.* 235. 4 *Kent's Com.* 13, 497.

Common recoveries were formerly in use in some of the United States, but have generally become obsolete, where they have not been expressly abolished. They were abolished by statute in New-Jersey in 1799, and in New-York by the Revised Statutes. 2 *R. S.* [343,] 265, § 24. See *United States Digest*, Common Recovery.

COMMON SCHOOLS. Schools for the elementary instruction of children of all classes; schools for general elementary education. Otherwise termed *public schools*, and *free schools*. 2 *Kent's Com.* 195—202, and notes.

COMMON SCOLD. [*L. Lat. communis rixatrix.*] A quarrelsome woman, whose conduct is a public nuisance to her neighborhood. 4 *Bl. Com.* 168. In England, common scolds may be indicted, and were formerly punishable by being placed in the trebucket, castigatory, or cucking stool, (q. v.) *Id. ibid.* 169. In American law, common scolds are nuisances, and may be punished as such. *Wharton's Am. Crim. Law*, 505.

COMMON SEAL. The seal of a corporation, by which alone, at common law, it could speak and act. *Davies' R.* 121. *Dyer*, 81 a. The rule requiring a seal to bind a corporation has, however, been considerably relaxed in England, and is, in a great degree, done away in the jurisprudence of the United States. 2 *Kent's Com.* 288—291, and notes.

COMMON SERJEANT. A judicial officer attached to the corporation of the city of London, who assists the recorder in disposing of the criminal business at the old Bailey sessions, or Central Criminal Court. *Holthouse. Centr. Crim. C. Rep. passim.*

COMMON VOUCHEE. The vouchee in common recoveries; the person vouched to warranty, or called on to defend the title of the tenant in those proceedings; called *common*, because the same person,

(viz. the crier of the court,) acted as vouchee in them all. 2 *Bl. Com.* 358, 359. See *Vouchee*.

COMMON WEAL. The common good; the public welfare. The law favoureth things for the common weal. *Finch's Law*, b. 1, ch. 3, num. 53. As, in time of war, to make bulwarks in another man's soil, without his license; to raze one's house on fire, in safeguard of the neighbors' houses. *Id. ibid.*

COMMONAGE. In old conveyancing. The right of common. See *Common*.

COMMONABLE. Entitled to common. Commonable beasts are either beasts of the plough, as horses and oxen; or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. *Co. Litt.* 122 a. 2 *Bl. Com.* 33.

COMMONALTY, Communality, Comminality. [*Lat. populus, plebs, communitas.*] In English law. The commoners or people of England, as distinguished from the nobility. 1 *Bl. Com.* 403. *Stat. Westm.* 1, pr.

The middle classes in England; the better and more influential sort of commoners. *Cowell, voc. Comminality. Holthouse.*

COMMONALTY. One of the component parts of an incorporated company, which usually consists, in England, of the master, wardens and commonalty; the two first being the chief officers or members, and the latter those who are usually called of the *livery*. 2 *Leon.* 165. *Whishaw. Holthouse.* See *Livery*.

In American law, it is similarly used to designate one branch or division of the members of a municipal corporation; as "the mayor, aldermen and commonalty" of a city.

COMMONERS. In English law. Persons having a right of *common*. So called because they have a right to pasture on the waste, in common with the lord. *Rooke, J. 2 H. Bl.* 386, 389.

Sometimes improperly used in the sense of tenants in common. *Id. ibid.*

Sometimes applied, in the United States, to cattle. Horses are called "free commoners." 2 *Michigan R.* 264.

COMMONS. The commoners or people of England, as distinguished from the nobility.* *Holt, C. J. 2 Ld. Raym.* 950. The commons consist of all such men of property in the kingdom, as have not seats in the house of lords. 1 *Bl. Com.* 158.

The popular branch of the English par-

liament; the house of commons. *Id.* 160.

COMMONTY. In Scotch law. Land possessed in common by different proprietors, or by those having acquired rights of servitude. *Bell's Dict.* 36 *Eng. Law & Eq. R.* 20.

COMMORANCY. [L. Lat. *commorantia*, from *commorari*, to stay, or sojourn.] The dwelling in any place as an inhabitant; which consists in usually lying there. 4 *Bl. Com.* 273. In American law, it is used to denote a mere temporary residence. Shaw, C. J. 19 *Pick. R.* 247, 248.

COMMORANT. Staying or abiding; dwelling, or usually lying in a place. 4 *Bl. Com.* 273. See *Commorancy*.

COMMORIENTES. Lat. [from *commorire*, to die together.] In the civil law. Persons dying together, in the same place, or from the same cause. *Hubback's Evid. of Succession*, 187. *Dig.* 34. 5. 8. 9. 16, 22, 23. 2 *Kent's Com.* 435, 436, note. 8 *Metcalf's R.* 371. 1 *Barbour's Ch. R.* 264. Called *pariter mortui*. *Dig.* 34. 5. 16.

COMMOTE. [L. Lat. *commotum*, from Brit. *cymbod*; *cym*, together, *bod*, being or dwelling; or from *cummud*, a province.] Half of a cantred or hundred in Wales, containing properly fifty villages. *Stat. Walliæ*, 12 *Edw. I.* 21 *Hen. VIII.* c. 26. *Spelman*, voc. *Commotum*. The fourth part of a hundred, according to Mr. Barrington, who cites *Girald. Camb.* c. 2. *Obs. Stat.* 125, note [h].

A great seigniorship or lordship, including one or more manors. *Co. Litt.* 5 a. Part of a seigniorship. *Thel. Dig.* lib. 8, c. 2, ¶ 18.

COMMOTUM. L. Lat. In old English law. A commote, (q. v.) *Spelman. Stat. Walliæ*, 12 *Edw. I.* cited *ibid.*

COMMUNANCE. In old English law. The commoners, or tenants and inhabitants, who had the right of common, or commoning in open fields or woods. *Cowell.*

COMMUNARE. L. Lat. In old English law. To common; to enjoy the right of common. *Cowell*, voc. *Communance*.

COMMUNAUTE. L. Fr. In old English law. Commonalty. *E* as *countes, e barouns, e a toute communaulte de la terre*; and to the earls and barons, and to all the commonalty of the land. *Conf. Chartar.* 25 *Edw. I.*

COMMUNE. L. Fr. In old English law. Commonalty; people. *La grant char-*

tre des franchises de Engleterre grantee a tote la commune d'Engleterre; the great charter of liberties of England, granted to all the people of England. *Artic. sup. Chart.*

COMMUNE. Fr. In old French law. A municipal corporation. *Steph. Lect.* 116.

COMMUNE CONCILIUM REGNI. Lat. The common council of the realm. One of the names of the English parliament. 1 *Bl. Com.* 148. *Fleta*, lib. 2, c. 66, § 6.

COMMUNE FORUM. Lat. The common place of justice. The seat of the principal courts, especially those that are fixed. Lord Brougham, 7 *Bell's Appeal Cases*, 169.

COMMUNE PLACITUM. L. Lat. In old English law. A common plea or action, such as an action of debt. *Fleta*, lib. 2, c. 61, § 18.

COMMUNE VINCULUM. Lat. A common or mutual bond. Applied to the common stock of consanguinity, and to the feudal bond of fealty, as the common bond of union between lord and tenant. 2 *Bl. Com.* 250. 3 *Id.* 230.

COMMUNI DIVIDUNDO. Lat. In the civil law. The name of an action brought for dividing a common property. *Inst.* 4. 17. 5. *Dig.* 10. 3. *Cod.* 3. 37, 38. *Story on Partn.* § 352. Mentioned in Bracton and *Fleta*. *Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

COMMUNIA. L. Lat. [from *communis*, common, or according to Bracton, from *cum*, with, and *una*, together; *una cum aliis*]. In old English law. Common. *Bract.* fol. 222. *Communia pasturæ*; common of pasture. *Id. ibid.* *Fleta*, lib. 4, c. 19. *Reg. Orig.* 155 b, 156. *Communia turbariæ*; common of turbary. *Id. Communia piscariæ*; common of piscary. *Id.*

COMMUNIA, [plur. of *communis*, q. v.] Lat. In old English law. Common things, (*res communes*). Such as running water, the air, the sea and sea-shores. *Bract.* fol. 7 b.

COMMUNIA, or **COMMUNÆ.** Lat. In old European law. Communities. Towns enfranchised by the crown, in most of the feudal kingdoms of Europe, about the twelfth century, and formed into free corporations, by what were termed charters of community. 1 *Robertson's Charles V.* 24—29, and notes in Appendix.

COMMUNIA PLACITA. L. Lat. In old English law. Common pleas or actions; those between common persons, i. e. between one subject and another, as distinguished from *placita coronæ*, pleas of the crown, or criminal actions. *Reg. Orig.* 187 b. *Bract.* fol. 115 b. *Communia placita non sequantur curiam nostram, sed teneantur in aliquo loco certo.* Common pleas shall not follow our court, but shall be held in some certain place. *Mag. Charta*, 9 Hen. III. c. 11. *Id. Joh.* c. 17. *F. N. B.* 24 D, note. In the original articles of Magna Charta, (c. 8,) the passage reads: *Ut communia placita non sequantur curiam domini regis, sed assignentur in aliquo certo loco.* This provision is generally considered as fixing the origin of the English court of Common Pleas. But, according to Lord Hale, it rather fixed the distinction between the King's Bench and the Common Bench, as to the point of *communio placita*. For before this, common pleas were frequently held in the King's Bench. *Hale's Hist. Com. Law*, ch. 7. *Communio placita inter subditos, ex jure nostro, quod commune vocant, in hoc disceptantur*: Common pleas between subjects are determined in this [court], according to our law which they call common. *Camd. Brit.* 113. See *Common Pleas*, *Common Bench*.

COMMUNIBUS ANNIS. Lat. In ordinary years; one year with another; on the annual average. 2 *Bl. Com.* 322. See *Hardr.* 329. 10 *East*, 219.

COMMUNICARE. L. Lat. In old English law. To common. *Bract.* fol. 229 b. *Communicantes*; commoners. *Id. ibid.* *Jus communicandi*; the right of commoning. *Fleta*, lib. 4, c. 19, § 4.

COMMUNICATION. [Lat. *communicatio*, from *communicare*, to talk together, to impart or share.] A talking or conferring with, where there is only a discourse between two or more, without any perfect agreement. *Cowell.* Conference, as distinguished from actual agreement.

The act of imparting information to another.

Information imparted by one person to another. See *Privileged communication*.

Intercourse; connection.

COMMUNIO BONORUM. Lat. Communio or community of goods, (qq. v.)

COMMUNION OF GOODS. In Scotch law. The right enjoyed by married persons in the moveable goods belonging to them. *Bell's Dict.*

COMMUNIS. Lat. Common. See *infra*.

COMMUNIS ERROR. Lat. A common error; an opinion or practice which has commonly been held or observed, though originally perhaps without adequate foundation in law.* See *Common error*, *Communis opinio*.

COMMUNIS ERROR FACIT JUS. Common error makes law. 4 *Inst.* 240. *Noy's Max.* 32, max. 27. Common error goeth for a law. *Finch's Law*, b. 1, c. 3, num. 54. Common error sometimes passes current as law *Broom's Max.* 99, 100, [104]. A common error may, in some cases, pass current as law. Thus, a practice which has been generally observed in a state for a great length of time, without objection or question, though it possibly might have originally been impeached, will be upheld in law, if the public good require it. This maxim is frequently applied to modes of conveyance which have been long in use. *Plowd.* 33 b. *Shep. Touch.* 40. *Story*, J. 5 *Mason's R.* 67, 69. 4 *N. Hamp. R.* 458. 2 *Hilliard's Real Prop.* 268. But so far as the maxim applies to common opinion, (*communis opinio*, q. v.) it is to be received and applied with great caution. See the observations of Lord Ellenborough, 3 *M. & S.* 396, 397. 6 *Cl. & Fin.* 199. And see *Multitudo errantium, &c.*

COMMUNIS OPINIO. Lat. Common opinion; general professional opinion. According to Lord Coke, (who places it on the footing of observance or usage,) common opinion is good authority in law. *Co. Litt.* 186 a. See *A COMMUNI OBSERVANTIA NON EST RECEDENDUM*. But this rule has in modern times been questioned, or much qualified. "*Communis opinio*," said Lord Ellenborough, "is evidence of what the law is,—not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the ground-work and *substratum* of practice." 3 *M. & S.* 396, 397. Lord Denman, C. J. *O'Connell v. Reg.* (Leahy's ed. 28.) Gibson, C. J. 4 *Penn. St. R.* 13, 28.

COMMUNIS PARIES. Lat. In the civil law. A common or party wall. *Dig.* 8. 2. 8, 13.

COMMUNIS RIXATRIX. L. 1: In old English law. A common scold, (q. v.) 4 *Bl. Com.* 168.

COMMUNIS SCRIPTURA. L. Lat. In old English law. A common writing; a writing common to both parties; a chirograph. *Glanv.* lib. 8, c. 1.

COMMUNIS STIPES. Lat. In old English law. A common stock; the common stock or root of descent; a common ancestor. *Blackst. Law Tr.* 6.

COMMUNIS STRATA. L. Lat. In old English law. A, or the common street or road. *Stat. Marlbr.* c. 15. 1 *Str.* 44. Argued to be synonymous with *regia via*, (q. v.) 10 *Mod.* 382.

COMMUNITAS. Lat. [from *communis*.] In old English law. A community, company or society. *Towns. Pl.* 18.

COMMUNITAS REGNI ANGLIÆ. Lat. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 *Bl. Com.* 148. According to Cowell, it signified the barons and tenants *in capite* of the kingdom. But in the statute *Cart. Conf.* 49 Hen. III. it is used in the sense of commonalty, as distinguished from the prelates, earls and barons, (*prelatorum, comitum, baronum et communitatis regni*). And see *Communaute*.

COMMUNITY. [Fr. *communauté*.] In French law. Common or joint possession or enjoyment; common or joint interest or participation. A species of partnership which a man and woman contract where they are lawfully married to each other. See 2 *Kent's Com.* 183—187, and notes.

COMMUTATION. [Lat. *commutatio*, from *commutare*, to change or exchange.] In criminal law. Change; substitution. The substitution of one punishment for another, after conviction of the party subject to it. The change of a punishment from a greater to a less; as from hanging to imprisonment.

COMMUTATIVE CONTRACT. [from *commutare*, to change or exchange.] In the civil law. A contract in which each of the contracting parties receives as much as he gives, or an equivalent for what he gives. *Pothier, Contr. of Sale*, part 1, sect. 1. *Poth. Obl.* part 1, ch. 1, sect. 1, art. 1.

COMON. L. Fr. Common. *Comon erudic'*; common learning; familiar law. *Dyer*, 27 b. (Fr. ed.)

COMORTHA. Welsh and L. Fr. In old English law. An assemblage. *Stat.* 4 Hen. IV. c. 27. Properly *cymortha* or *cymmorthau*. *Barringt. Obs. Stat.* 360, note [y].

COMPACT. [from Lat. *con*, together, and *pactum*, a promise.] An agreement or contract, usually of the more formal or solemn kind. A contract or engagement between nations, or states, or the individuals of a community. See 1 *Kent's Com.* 419.

COMPANAGE. [L. Lat. *companagium*, from *cum*, with, and *panis*, bread.] In old English law. Any meat, or other edibles, to be eaten with bread. *Cowell. Quicquid cibi cum pane sumitur. Spelman, voc. Companagium.*

COMPANAGIUM. L. Lat. Companage, (q. v.) *Spelman*.

COMPANY. An association of persons in a common interest, for the purpose of carrying on some commercial or industrial undertaking, or other legitimate business.

COMPARE. Sc. To compound. Lord Hardwicke, *Amb.* 185.

COMPARENTIA. L. Lat. [from *comparere*, q. v.] In old practice. Appearance. 1 *Leon.* 90.

COMPARERE. Lat. [L. Fr. *comparer*, *compoir*.] In old English practice. To appear; closely rendered in the Scotch law, to *compear*. *Comparet*; (he) appears. *Bract.* fol. 334 b. *Comperuit*; (he) appeared. See *Comperuit ad diem. Comparebit*; (he) shall appear. *Reg. Orig.* 291 b. *Comparere* is used in *Clerke's Praez. Cur. Adm.* tit. 1. *Comparuerit. Bract.* fol. 365. *Comparuisset. Reg. Jud.* 5. *Compurentibus*; appearing. *Bract.* fol. 183 b, 372 b. *Cum partes in judicio comparuerint*; when the parties have appeared in court. *Id.* fol. 296 b.

COMPARATIO LITERARUM. Lat. In the civil law. Comparison of writings, or handwritings. A mode of proof allowed in certain cases. *Cod.* 4. 21. 20. *Nov.* 49, c. 2. *Bell's Dict.* 2 *Alison's Crim. Pr.* 608. *Bell's Contr. of Sale*, 69. See *Collatio signorum, Comparison of hands*.

COMPARISON OF HANDS. In the law of evidence. A mode of proving a handwriting or signature, by comparing it with another, in order to ascertain whether both were written by the same person.* In England, this species of evidence is, in general, not admissible. 5 *Ad. & Ell.* 708. *Best on Presumptions*, 221—234, §§ 162—171. In some of the United States, as in New-York, this rule is followed. 5 *Hill's R.* 182. 1 *Denio's R.* 343. In others, a different rule has been established. 1 *Greenleaf on Evid.* §§ 579—581, and notes. In Kentucky, the weight of authority is against the admission of handwritings for the purpose of comparison, even by the jury. 13 *B. Monroe's R.* 258. The rule seems to be the same in North Carolina. See 1 *Jones' Law R.* 150. But in Georgia,

the court or jury may compare two documents together, when properly in evidence, and from that comparison form a judgment upon the genuineness of the handwriting or the identity of the writers. 16 *Georgia R.* 521.

COMPARITIO. L. Lat. [from *comparere*, q. v.] In old practice. Appearance. *Clerke's Praez. Cur. Adm.* tit. 5.

COMPASCUUM. Lat. [from *compasci*, to feed together.] Belonging to commonage. *Jus compascuum*; the right of common of pasture. See *Common*.

COMPATERNITAS. Lat. In the canon law. A kind of spiritual relationship (*coppatio spiritualis*) contracted by baptism. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 161, note. *Bract.* fol. 298 b. One of the grounds of divorce. *Id. ibid.*

COMPEAR, Compeir. In Scotch law. To appear. 1 *Forbes' Inst.* part 4, b. 2, ch. 2, tit. 2. Very literally formed from the L. Lat. *comparere*, (q. v.)

COMPEARANCE. In Scotch practice. Appearance; an appearance made for a defendant; an appearance by counsel. *Bell's Dict.* 2 *Alison's Crim. Pr.* 343. Skene writes it *compeirance*. *De Verb. Sign.* voc. *Iter*.

COMPELLATIVUM. L. Lat. [from *compellare*, to accuse.] In old records. An accuser or adversary. *Whishaw*.

COMPENDIUM. Lat. An abridgment. *Compendia sunt dispendia*; abridgments are losses or wastes [of labor or time]. *Co. Litt.* 305 b. "And therefore it is ever good to rely upon the book at large." *Id. ibid.*

COMPENSATIO. Lat. In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim, on the part of the defendant, to have an amount due to him from the plaintiff deducted from his demand. *Dig.* 16. 2. *Inst.* 4. 6. 30, 39. *Cod.* 4. 31. 3 *Bl. Com.* 305. 1 *Kames' Equity*, 395. Called in the Digesta, *debiti et crediti inter se contributio*. *Dig.* 16. 2. 1.

COMPENSATIO CRIMINIS. Lat. (Set-off of crime or guilt.) In practice. The plea of recrimination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offence with which he or she charges the defendant. *Shelford, Marr. & Div.* 440. 2 *Ken's Com.* 100. See *Recrimination*.

COMPENSATION. [from Lat. *compensatio*, q. v.] In the civil and Scotch law.

Set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other, that is to say, where one person is both debtor and creditor to another, and, therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. *Bell's Dict.* 1 *Kames' Equity*, 395, 396. 2 *Id.* 101.—The extinction of debts of which two persons are reciprocally debtors, by the credits of which they are reciprocally creditors. *Poth. Oblig.* part 3, ch. 4. See *Schmidt's Civ. Law*, 124.

COMPERENDINATIO. Lat. In the Roman law. The adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause. *Calv. Lex. Brisonius*.

COMPERER. L. Fr. To appear. *Rot. Parl.* 4 Hen. IV.

COMPERIT. O. Sc. Compeared; appeared. 1 *Pitt. Crim. Trials*, part 1, p. 2.

COMPERTORIUM. L. Lat. [from *compereire*, to discover.] In old English law. A judicial inquest made by delegates or commissioners, to find out and relate the truth of a cause. *Kennett's Par. Ant.* 575. *Cowell*.

COMPERUIT AD DIEM. L. Lat. (He appeared at the day.) In practice. A plea in an action of debt on a bail bond, that the defendant appeared at the day required, by putting in bail, according to the condition of the bond. 1 *Tidd's Pr.* 310, 318. *Comperuerunt ad diem*; they appeared at the day. 6 *Taunt.* 167.

COMPESTER. [L. Lat. *compostare*.] To manure. *Co. Litt.* 122 a.

COMPETENCY. Capability; admissibility. Applied to witnesses, to signify legal ability to be received and examined on the trial of a cause. 3 *Bl. Com.* 369.

Propriety or sufficiency as a legal remedy. See *Competere*.

COMPETENT. [Lat. *competens*, from *competere*, q. v.] Capable; legally qualified; having legal capacity, as a competent witness. See *Competency*.

COMPETENT AND OMITTED. In Scotch practice. A term applied to a plea which might have been urged by a party during the dependence of a cause, but which had been omitted. *Bell's Dict.*

COMPETERE. Lat. In the civil and common law. To be proper, as a legal remedy; to lie, as an action. *Actio ei competit*; an action lies for [may be maintained

by] him. *Inst.* 4. 1, 13. *Bract.* fol. 103 b. *Competit assisa*; an assise lies. *Id.* fol. 25. *Competunt heredi duo remedia*; the heir has two remedies. *Id.* fol. 219. Hence the modern phrase, *competency of actions. Supra.*

To be proper or available; as a pleading. *Competit exceptio—replicatio, &c. Bract.* fol. 25, 26.

COMPETITION. In Scotch practice. The contest among creditors claiming on their respective diligences, or creditors claiming on their securities. *Bell's Dict.*

COMPILATION. [Lat. *compilatio*, from *compilare*, to plunder.] A collection of certain parts of a book or books into a separate work.* *Webster.* A literary composition made up from the works of others.

COMPLAIN. [Lat. *queri.*] In practice. To represent facts constituting a supposed injury or offence, to a court or officer having jurisdiction; to charge a person with the commission of some injury or offence. In a declaration at common law, the plaintiff (or *complaining party*) "complains" of the defendant, &c.

COMPLAINANT. [Lat. *querens.*] In practice. One who *complains* of another, by instituting legal proceedings against him. The *actor*, or party suing in equity, answering to the *plaintiff* (which has the same sense) at common law. The term *plaintiff*, however, is also frequently used in equity proceedings.*

COMPLAINT. [Lat. *querela.*] In practice. Representation of facts constituting a supposed injury or offence, to a court or officer having jurisdiction. An accusation or charge against a person as having committed an alleged injury or offence.

In New-York practice. The name of the first pleading on the part of the plaintiff in an action. *Code*, § 141, [119].

COMPLEMENTUM JUSTITIÆ. L. Lat. In old practice. Fullness of justice; full justice. *Reg. Orig.* 88, 89.

"COMPLETED" construed. 3 *Jones' Law R.* 517.

COMPOS MENTIS. [plur. *compotes mentis.*] Lat. In possession of one's mind, or mental faculties; of sound mind. 4 *Bl. Com.* 25. 2 *Kent's Com.* 451.

COMPOS SUL. Lat. Having power of one's self; having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum*; if he had so far the use of his limbs, as to be able to travel from place to place. *Bract.* fol. 14 b.

COMPOSITIO. Lat. [from *componere*, to put together, or frame.] A putting together, or making up; an agreement, composition or satisfaction.* See *Composition.*

A statute or ordinance. See *infra.*

COMPOSITIO MENSURARUM. Lat. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 *Hen. VIII.* c. 4; establishing a standard of measures. 1 *Bl. Com.* 275. Spelman quotes it as the statute 51 *Hen. III.* *Gloss. voc. Galo.*

COMPOSITIO ULNARUM ET PER-TICARUM. Lat. The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 *Bl. Com.* 275.

COMPOSITION. An agreement between debtor and creditor, by which the latter agrees to discharge the former on payment of a certain sum.* See *United States Digest*, *Composition.*

In English ecclesiastical law. An agreement, (otherwise called a *real composition*), made between the owner of lands, and a parson or vicar, with the consent of the ordinary and the patron, that such lands shall, for the future, be discharged from payment of tithes by reason of some land, or other real recompense given to the parson, in lieu and satisfaction thereof. 2 *Bl. Com.* 28. *Reg. Orig.* 38 b. 2 *Inst.* 490. 2 *Wooddes. Lect.* 67, 68. 3 *Steph. Com.* 129.

COMPOSITION. In old European law. A sum of money paid, among the early barbarous nations of Europe, as satisfaction for an injury, either to the person offended, when capable of receiving it, or to his relatives; and so called because originally made by mutual *agreement* of the parties. 1 *Robertson's Charles V.* Appendix, Note xxiii. *Esprit des Lois*, liv. 30, c. 19. It might be paid in cattle, corn, moveables, or lands, instead of money. *Id. ibid.*

COMPOSITION. In patent law. A compounding or putting together; mixture. *Act of Congress*, July 4, 1836, sect. 6.

COMPOTARIUS. [L. Lat. from *computus*, q. v.] In old English law. A party accounting. *Fleta*, lib. 2, c. 71, § 17.

COMPOTUS. L. Lat. In old English law. An account. *Stat. Marlbr.* c. 22. *Stat. Westm.* 2, c. 11. *Compotum reddere*; to render an account. *Fleta*, lib. 2, c. 14, § 1. *Id.* c. 30. *De compoto reddendo*; of rendering an account. *Id.* c. 70. A more modern form was *computus*, (q. v.)

A statement of account; a book of accounts. The household book of a religious house, containing the items of its expenditure and income, was styled the *compotus*.

COMPOUNDING A FELONY. In criminal law. The offence of taking a reward for forbearing to prosecute a felony. As where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute. 4 *Chitty's Bl. Com.* 133 and notes. 4 *Steph. Com.* 259. *Steph. Crim. Law*, 66. It is a misdemeanor at common law, and by statute, and punishable by imprisonment. *Id. ibid.* *Lewis' U. S. Crim. Law*, 200—203.

COMPRA Y VENTA. Span. In Spanish law. Purchase and sale. *White's New Recop.* b. 2, tit. 13.

COMPRINT. In old English law. Literally, to print together. The surreptitious printing by one bookseller of another's copy, to make gain thereby, and which is not only contrary to the common law, but is also forbidden by several English statutes. *Stat.* 14. *Car.* II. c. 33; 16 *Car.* II. c. 6; 16 & 17 *Car.* II. c. 7; 17 *Car.* II. c. 4. *Cowell*.

COMPRIVIGNI. Lat. In the civil law. Children by a former marriage, (individually called *privigni*, or *privignæ*), considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. *Inst.* 1. 10. 8. See *Privignus*, *Privigna*.

COMPROMISE. [Lat. *compromissum*, q. v.] A mutual agreement between two or more persons at difference, to put an end to such difference upon certain terms agreed upon. *Whishaw*.

A mutual agreement to submit matters in dispute to the decision of arbitrators.* *Termes de la Ley.* *Cowell*. This was formerly the ordinary meaning of the term, derived from the *compromissum* of the civil law, (q. v.)

Any adjustment of matters in dispute, by mutual concession without resort to the law. *Tomlins.* *Smith*, J. 2 *Wisconsin R.* 1, 6, 7.

COMPROMISSARIUS. Lat. [from *compromissum*, q. v.] In the civil law. Relating to a *compromissum* or submission to arbitration. A term applied to an arbiter or arbitrator. *Dig.* 4. 9. 41. Otherwise termed *arbiter ex compromisso*. *Id.* 4. 8. 33.

COMPROMISSUM. Lat. [quasi con-

promissum, a mutual promise.] In the civil and canon law. A submission to arbitrators. *Dig.* 4. 8. 4 *Reeves' Hist. Eng. Law*, 13, and note (p). Hence the modern term *compromise*, (q. v.)

COMPROMITTERE. Lat. [from *con*, together, and *promittere*, to promise.] In the civil law. To submit to arbitration. *Dig.* 4. 8. 27. 2.

COMPTER. The name of a prison in London. 1 *Show.* 162. See *Counler*.

COMPTER. In Scotch law. An accounting party. *Skene de Verb. Sign. voc.* *Ballivus*, *Scaccarium*.

COMPTROLLER. Properly **CONTROLLER.** See *Controller*.

COMPURGATOR. Lat. [from *con*, together, and *purgare*, to purge or clear.] In old European law. One who *purged* another from an accusation or charge, by swearing *with*, or after him, that he believed his oath of his own innocence.* In the old mode of trial by wager of law, the defendant first himself swore that he did not owe the plaintiff any thing, and then produced (usually) eleven *compurgators*, who swore after him that they believed in their consciences that he spoke the truth. 3 *Bl. Com.* 342, 343. 3 *Steph. Com.* 525. *Co. Litt.* 295. *Bract.* fol. 410. See *Law*, *Wager of law*.

* * * The trial by compurgators seems to have been equally known to the British, Saxon and Norman laws, as well as to the laws of the barbarous nations of the continent. *Spelman*, *voc.* *Assath.* *Crabb's Hist. Eng. Law*, 30. *Grand Coustum.* c. 85, [26.] *Esprit des Lois*, liv. 28, c. 13. It was anciently confined to charges of *crime*, and was conducted by the compurgators laying their hands on the gospels, or some relics, and the party accused laying his hand over all the rest, and swearing by God and all the hands under him, that he was not guilty of the crime laid to his charge. The compurgators were supposed, by this act, to declare upon their oaths, that they believed he had sworn the truth, and the party himself was said to *swear by any given number of hands*, according to the number of persons joining in the oath. *Ducange*, *voc.* *Juramentum*. Hence the phrase *jurare duodecima manu*, and the name of *compurgators*, as contributing by their oaths to *purge* the party of the crime laid to his charge. *Crabb's Hist. ub. sup.* In the feudal law, compurgators were used, under the name of *sacramentales*, in prov-

ing the investiture of fiefs, where the fact was disputed. *Feud. Lib.* 1, tit. 4, § 3. *Id.* tit. 10, 26, 28. *Lib.* 2, tit. 33, § 2. They were also termed *consacramentales* and *conjuratores*. *Spelman*, voc. *Lex*, *Legem vadiare*.

COMPUTATION. [Lat. *computatio*.] The account and construction of time by rule of law, as distinguished from any arbitrary construction of parties; as, of how many days a month shall consist; on what day a lease shall be said to commence and end; what days shall be included or not in the times of notices, rules of court, &c.; that fractions of a day shall not be reckoned, and the like.* *Cowell. Termes de la Ley.* 2 *Chitt. Bl. Com.* 140, note. The rule in regard to the computation of time is, that where the computation is to be made from an act done, the day on which the act was done must be included; but where the computation is to be made from the day itself, the day on which the act was done must be excluded. 13 *B. Monroe's R.* 460. 4 *Kent's Com.* 95, note. See *Time, Day, Month, Year*.

COMPUTO. See *Computus*.

COMPUTUS, (sometimes written **COMPOTUS**.) L. Lat. [from *computare*, to count, or account.] An account. The old writ of account was called a writ *de compute*, from the words used, *quod juste et sine dilatione, reddat rationabile computum suum*; (that justly and without delay, he render his reasonable account). *Reg. Orig.* 135.

COMTE. Fr. [Lat. *comes*.] Count. A title of office in the ancient law of France, denoting a governor of a particular territory or district, who united the characters of a military leader and a judge. As a judge, he had an equal jurisdiction with the *missus dominicus*, or king's commissary. *Espit des Lois*, liv. 28, c. 28; liv. 30, c. 18. As a military officer, he commanded the freemen, and led them to the field. *Id.* liv. 30, c. 17, 18. Montesquieu says he was at the head of all the freemen of the monarchy. *Id.* liv. 31, c. 23. See also *Id.* liv. 30, c. 18; liv. 31, c. 1. The *comte* was subordinate to the *duc* (duke). *Guyot, Inst. Feod.* ch 1, sect. 8. See *Comes, Count*.

In later times, a title of nobility. *Boulainvilliers Etat de la France*, iii. 56. *Baringt. Obs. Stat.* 31.

COMUNE. L. Fr. Common. *Comune* *laroun*, ou *comune robour*; a common

thief or a common robber. *Yearb. M.* 3 *Edw.* II. 55.

COMUNEMENT. L. Fr. Commonly. *Il est comunement dit.* *Litt.* sect. 288. "That is," says Lord Coke, "it is the common opinion." *Co. Litt.* 186 a. See *Litt.* sect. 697.

COMYN. L. Fr. Common. *Kelham*.

CON BUENA FE. Span. In Spanish law. With good faith; in good faith; *bona fide*. *White's New Recop.* b. 2, tit. 2, ch. 8.

CONCEALMENT. [L. Lat. *concelamentum*.] The suppression or keeping back of a fact or circumstance privately known to one of the parties to a contract, either through inadvertence or mistake, or intentionally, in order to draw the other into a bargain from his ignorance of such fact, and his believing the contrary.* Lord Mansfield, 3 *Burr.* 1905. 2 *Kent's Com.* 482—485. 3 *Id.* 282. Thus, where the insured keeps back from, or neglects to communicate to the underwriter, any material circumstance in his knowledge, in consequence of which the latter is led into a belief that the circumstance does not exist, and is induced to estimate the risk as if it did not exist, such concealment renders the policy void.* 3 *Burr. ub. sup.* *Concealment*, however, is distinguished by Lord Mansfield from an innocent silence as to grounds open to both parties to exercise their judgment upon. *Aliud est celare, aliud tacere; neque enim id est celare quicquid reticeas; sed cum quod tu scias, id ignorare emolumenti tui causa velis eos, quorum intersit id scire.* (It is one thing to conceal, another thing to be silent; for mere silence does not always amount to concealment, but only when it is coupled with a desire that those whose interest it is to know a fact known to yourself, should remain ignorant of it, with a view to your own advantage.) *Id. ibid.* See 2 *Duer on Ins.* Lect. xiii.

CONCEALERS. [L. Lat. *concelatores*; from *concelando*, says Cowell, by antiphrasis; because they did the reverse of concealing.] In old English law. Detectors or discoverers of concealed lands. Persons appointed by letters patent, (termed letters of concealment,) to discover lands, which, in the reigns of Elizabeth and James, were suspected of being concealed, that is, secretly kept or withheld from the crown. *Termes de la Ley.* *Cowell.* They are called by Lord Coke, *turbidum hominum genus*,

(a troublesome, disturbant sort of men). 3 *Inst.* 188.

CONCEDERE. Lat. To grant. *Cuiusque aliquid conceditur, conceditur et id sine quo res ipsa non esse potuit.* To whomsoever any thing is granted, that also is granted without which the thing itself could not exist. When any thing is granted, all the means to attain it, and all the fruits and effects of it are granted also; and shall pass inclusive, together with the thing, by the grant of the thing itself, without the words *cum pertinentiis*, or any such like words. *Shep. Touch.* 89. Thus, if a man conveys a piece of ground in the midst of his estate, a right of way to come to it, over the land not conveyed, will pass to the grantee. 1 *Steph. Com.* 464. *Co. Litt.* 56 a. *Finch's Law*, b. 1, c. 4, num. 86. *Broom's Max.* 198, [362]. This is one of the fundamental maxims of construction of deeds. 1 *Steph. Com.* 462, 463. Its phraseology is sometimes varied thus: *Cuiusque aliquid quid concedit, concedere videtur et id sine quo res ipsa esse non potuit.* To whomsoever any one grants a thing, he is supposed [seems] to grant that also without which the thing itself could not exist, [the grant itself would be of no effect]. 11 *Co.* 52. *Broom's Max.* 198, [362]. Thus, "if I grant you my trees in my wood, you may come with carts over my land to carry the wood." 11 *Co. ub. sup.*

Another form of this maxim is the following (q. v.): *Quando lex aliquid alieni concedit, concedere videtur et id sine quo res ipsa esse non potest, [or id per quod devenitur ad illud.]* When the law grants any thing to any one, it is supposed [it seems] to grant that also without which the thing itself could not exist, [the means of attaining it].

CONCEDO. Lat. I grant. An emphatic word in Anglo-Saxon grants of land. *Heming*, 158, 215, 228.

A word used in old statutes-merchant. *Fleta*, lib. 2, c. 64, § 3.

CONCELARE. L. Lat. In old English law. To conceal. *Concelata*; concealed. *Bract.* fol. 70 b. *Concelamentum*; concealment. *Stat. Westm.* 2, c. 39. *Fleta*, lib. 1, c. 48, § 2.

CONCEPTUM. Lat. (Found.) In the civil law. A theft (*furtum*) was called *conceptum*, when the thing stolen was searched for, and found upon some person in the presence of witnesses. *Inst.* 3. 1. 4.

Actio concepti; an action which lay against the possessor of a thing stolen, al-

though he did not commit the theft. *Id. ibid.*

CONCESSI, CONCESSIT. Lat. (I have granted—he has granted; from *concedere*, to grant.) Words anciently of frequent use in conveyances, being the emphatic and essential words in *grants*, properly so called; and formerly held to amount to a covenant in law. *Co. Litt.* 384 a. See *Concessio, Dedi et concessi, Grant.* *Bracton*, in commenting on the word *concessi*, says it imports consent, (*quod donationi consensum præbuit, quia non multum differt dicere concessi, quam dicere consensi*); there being not much difference between saying *concessi* and *consensi*, (I have consented). *Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5.

Concessimus (we have granted) is prominently used in the commencement of *Magna Charta*, c. 1.

CONCESSIO. Lat. [from *concedere*, to grant.] In old English law. A grant. One of the old common assurances, or forms of conveyance, being properly of things incorporeal, which cannot pass without deed. *Co. Litt.* 9 b. 2 *Bl. Com.* 317. See *Grant*.

Concessio versus concedentem latam interpretationem habere debet. A grant ought to have a broad interpretation [to be liberally interpreted] against the grantor. *Jenk. Cent.* 279.

CONCESSIT, (pl. CONCESSERUNT.) In old practice. Granted; allowed; agreed; concurred. A common term in the old reports. "Whitlock, J. *concessit.*" *Litch.* 144. "*Quod* Crew, C. J. and Jones, J. *concesserunt.*" *Id.* 149.

CONCESSOR. Lat. [from *concedere*, to grant.] In old English law. A grantor. *Towns. Pl.* 35.

CONCESSUS. Lat. [from *concedere*, to grant.] In old English law. A grantee. *Towns. Pl.* 35. *Concessus per literas patentes*; a patentee. *Id.* 40.

CONCESSUM. Lat. [from *concedere*, to grant.] Granted, or allowed. A term of frequent occurrence in the old reports, denoting the assent of the court to a doctrine or position laid down on the argument of a cause. *Quod fuit concessum per totam curiam*; which was granted by the whole court. See the reports *passim*. Lord Coke observes that "an *il est dit*, (it is said,) with Littleton, is as good as a *concessum* in a book case." *Co. Litt.* 328 b. The same meaning is sometimes expressed by the

phrases *non fuit negatum*, and *non fuit deductum*, (was not denied). *Latch*, 149. *Dyer*, 14.

CONCILIABULUM. Lat. [from *concilium*.] A council house. *Towns. Pl.* 184.

CONCILIUM. Lat. In old English law. A council. *Concilium regis privatum*; the king's privy council; called also *concilium continuum*, (perpetual council,) and *concilium secretum regis*, (the king's secret council.) *Crabb's Hist. Eng. Law*, 227.

Magnum concilium regis; the king's great council. *Id.* 228. One of the ancient names of the English parliament. 1 *Reeves' Hist. Eng. Law*, 62. 8 *Co.* 39. 1 *Bl. Com.* 148.

Legale concilium; the king's council at law; the king's council of advice in matters of law. *Hale's Anal.* sect. iii.

Concilium militare; the king's council in time of war or public hostility. *Id.*

CONCILIUM, CONSILIUM. L. Lat. In English practice. Argument; or the sitting of a court to hear argument. *Dies concilii*; a day to hear the counsel of both parties in court. *Uterius concilium*; further argument. 2 *Stra.* 802. 2 *Wils.* 125. A motion for a *concilium*, or day for the argument of a cause, was formerly moved for upon reading the record in court, but now it is a motion of course. 2 *Tidd's Pr.* 737—739.

The counsel in a cause or matter. *Concilium non dedit advisamentum*; the counsel did not give the advice. *Cro. Eliz.* 9.

CONCIO. Lat. A discourse or sermon. *Towns. Pl.* 212.

CONCIONATOR. L. Lat. In old records. A common council man; a free-man called to a [legislative] hall or assembly. *Cowell*.

CONCIPERE. Lat. In old practice. To conceive; to express in words; to frame or draw a legal instrument. *Clerke's Praz. Cur. Adm.* tit. 6.

CONCLUDE. [Lat. *concludere*, from *con*, together, and *claudere*, to shut.] To determine, finish, shut up, [or close]. *Co. Litt.* 37 a.

To estop or bar a man to plead or claim any other thing. *Id. ibid.* To bar or shut out; to shut up a party to a position which he has taken.* Thus, where a sheriff has returned a *capias* that he has taken the defendant, he is *concluded* by such return, i. e. barred, shut out or estopped from questioning the return itself, or avoiding it.

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legal effect in making him liable to the plaintiff.* *Termes de la Ley. Cowell*.

CONCLUSION. [Lat. *conclusio*, from *concludere*, to conclude.] An estoppel or bar, arising from some previous act or admission of a party. See *Conclude*.

An inference or deduction of law.

An end or close, as of a pleading.

CONCLUSION TO THE COUNTRY.

In pleading. The tender of an issue to be tried by jury. *Steph. Plead.* 230. The peculiar conclusion of pleadings by way of traverse or denial; expressed on the part of the defendant, by the clause,—“*And of this he puts himself upon the country*,” (et de hoc ponit se super patriam;) and on the part of the plaintiff, by the clause,—“*And this he prays may be inquired of by the country*,” (et hoc petit quod inquiretur per patriam;) being the offer of the pleading party to refer the issue raised upon such pleading to the decision of a jury. *Steph. Plead.* 73, 78, 230.

CONCLUSIVE. [from Lat. *concludere*, to shut together, or shut up.] Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; decisive. See *infra*.

CONCLUSIVE EVIDENCE. Evidence which, in its nature, does not admit of explanation or contradiction; such as what is called *certain circumstantial* evidence. *Burr. Circ. Evid.* 89.

Evidence which, of itself, whether contradicted or uncontradicted, explained or unexplained, is sufficient to determine the matter at issue. 6 *Lond. Law Mag.* 373. And see 1 *Stark. Evid.* 453.

CONCLUSIVE PRESUMPTION. A species of presumption of law, which cannot be disputed or rebutted; otherwise called a *præsumptio juris et de jure*, (q. v.) It is rather a rule of law, than a presumption in the proper sense. *Vinnius, Jurispr. Contr.* lib. 4, tit. 36. “Conclusive presumptions are rules determining the quantity of evidence requisite for the support of any particular averment, which is not permitted to be overcome by any proof that the fact is otherwise.” 1 *Greenl. Evid.* § 15. Of this class, is the presumption that a sane man contemplates and intends the natural and probable consequences of his own acts. *Id.* § 18. Lord Ellenborough, 3 *M. & S.* 11, 15. *Burr. Circ. Evid.* 46, 47.

CONCORD. [Lat. *concordia*; L. Fr.

peez.] In old practice. An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. *Plowd.* 5, 6, 8. The more modern term is *accord*. See *Accord and satisfaction*.

An agreement between the parties to a fine of lands, how and in what manner the land should pass. *Termes de la Ley*. Called in the statute *Modus levandi fines*, "the peace." 2 *Inst.* 510. It was one of the necessary parts of a fine, and indeed the foundation and substance of it, being an acknowledgment that the lands in question were the right of the complainant.* 2 *Bl. Com.* 350. 1 *Steph. Com.* 517. See *Fine, Cognizance, Peace*. Hence fines themselves were anciently called *concordes*, and *final concordes*. *Crabb's Hist. Eng. Law*, 94, 178.

CONCORDAT. An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters. *Webster*.

CONCORDES. Lat. [plur. of *concor*, q. v.] In old practice. Agreed, as a jury upon their verdict. *In dicendo veredictum suum, aut omnes concordcs sunt, aut quidam concordcs et quidam discordcs*; in delivering their verdict, they are either all agreed, or some are agreed, and some not. *Bract.* fol. 292. *Donec unanimcs fuerint et concordcs*; until they shall be unanimous and agreed. *Fleta*, lib. 4, c. 9, § 2.

Agreed or unanimous. Said of the plaintiff's *secta*. *Fleta*, lib. 2, c. 47, § 5.

CONCORDIA. Lat. In old English law. An agreement, or concord. *Fleta*, lib. 5, c. 3, § 5. See *Concord*.

The agreement or unanimity of a jury. *Compellere ad concordiam*. *Fleta*, lib. 4, c. 9, § 2.

CONCORDIA DISCORDANTIUM CANONUM. Lat. The harmony of the discordant canons. A collection of ecclesiastical constitutions made by Gratian, an Italian monk, A. D. 1151; more commonly known by the name of *Decretum Gratiani*, (q. v.) 1 *Bl. Com.* 82. See *Canon law*.

CONCUBINE. [Lat. *concubina*, from *concumbere*, to lie together.] A woman with whom a man cohabits without marriage, as distinguished from a lawful wife.* Where a man had a bastard son, and afterwards married the mother, and by her had a legitimate son, the woman before marriage was called *concubina*, and afterwards *mulier*. *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 248.

CONCUBINE. In the civil law. A

woman taken to cohabit in the manner, and under the character of a wife, but without being authorized thereto by a legal marriage. *Shelford, Marr. & Div.* 10, and note. See *Tayl. Civ. Law*, 273.

CONCUBINAGE. [Lat. *concubinatus*.] The cohabitation of a man with a woman to whom he is not united by marriage.*

A plea or exception in the old action of dower, that the claimant was not lawfully married to the party from whose lands she sought to be endowed, but only his concubine.* *Bract.* fol. 302. *Britt.* c. 107.

CONCUBINAGE. In the civil law. A species of marriage, or rather a half, or semi-marriage, (Lat. *semi-matrimonium*; Gr. *ἡμιγάμος*), authorized by law. *Shelford, Marr. & Div.* 10. *Cooper's Justin. Inst. Notes*,* 420. See *Tayl. Civ. Law*, 273.

CONCULCARE. Lat. In old English law. To trample down, or tread under foot. *Conculcavit et consumpsit*; (he) trod down and consumed. *Reg. Orig.* 94.

CONCUR. [from Lat. *concurrere*, to run together.] To meet; to unite. Formerly applied to things, as to titles. "When two titles concur, the best is preferred." *Finch's Law*, b. 1, ch. 4, num. 82.

To claim jointly with others; to claim at the same time; to claim adversely. See *Concursus*. Not in use.

CONCURATOR. Lat. In the civil law. A co-curator, or co-guardian. *Inst.* 1. 24. 1.

CONCURRENCE. [Lat. *concurrere*, q. v.] In the civil law. A term applied to actions where two or more meet in, or may be brought by one and the same person, on the same ground of action. 1 *Mackeld. Civ. Law*, 195, § 198. It has not been adopted in the common law, though the participle "concurrent" is constantly used in expressing the same idea. See *Concurrere*. *Concourse* is the term used in Scotch law. See *Concourse of actions*.

CONCURRERE. Lat. [from *con*, together, and *currere*, to run.] In the civil law. To run together; to meet; to be equally available for attaining a certain object; to concur.* *Traditum est, duas lucrativas causas in eundem hominem, et eandem rem concurrere non posse*; it is a maxim that two lucrative actions cannot concur, or meet in the same person, and for the same thing. *Inst.* 2. 20. 6. See *Dig.* 17. 43. 1. *Ubi due actiones de eadem re concurrunt*; where two actions concur for the same thing. *Bract.* fol. 114. The verb *concur* (q. v.) is not now used in

English in this sense, being exclusively applied to persons.

Concurrentes, concurrentes; concurrent. *Cum quis plures habeat actiones concurrentes de eadem re*; where one has several concurrent actions in respect of the same matter. *Bract*. fol. 114. The corresponding English phrases "*concurrent actions*," "*concurrent remedies*," are in constant use.

CONCURSUS. Lat. [from *concurrere*, q. v.] In the civil law. A running together; a meeting or concurrence. *Concursus actionum*; concurrence or concourse of actions. *Inst.* 4. 7. 5. *Id.* 4. 3. 11. See *Concurrence*.

A running together; collision or conflict. *Concursus creditorum*; the conflict or conflicting rights of creditors, in relation to their liens, privileges and priorities, in cases of insolvency and other cases. *Story's Conf. Laws*, § 325 c, § 433 a.

CONCUSS. [from Lat. *concudere*, q. v.] In Scotch law. To coerce. *Shaw's R.* 322.

CONCUSSIO. Lat. [from *concudere*, q. v.] In the civil law. The offence of extortion by threats of violence. *Dig.* 47. 13.

CONCUTERE. Lat. [from *con*, together, and *quater*, to shake.] In the civil law. To coerce by threats of violence; to extort from the fears of a person. *Dig.* 1. 18. 6. 3. *Brissonius*.

CONDEMN. [Lat. *condemnare*.] To find or adjudge guilty. "If one be condemned in an action upon the case." 3 *Leon.* 68, case 103.

In international law. To declare a vessel legally captured. See *Condemnation*.

In maritime law. To pronounce worthless; to declare a vessel unfit for service.

CONDEMNATION. In international law. The sentence of a court of competent jurisdiction, that a ship or vessel taken on the high seas was liable to capture, and was legally captured. *Chitty's Law of Nations*, 99. *Holthouse*. This sentence is, in all cases, essential to change the property. 1 *Ken's Com.* 102, 103.

CONDEMNATION MONEY. In practice. The damages which the party failing in an action is adjudged or condemned to pay; sometimes simply called the *condemnation*. 3 *Bl. Com.* 291. It answers to the *judicatum* of the civil law. *Id.* 291, 292.

CONDEMPNARE. L. Lat. An old

form of *condemnare*, to condemn. *Bract*. fol. 128.

CONDERE. Lat. To make or establish. *Testamentum condere*; to make a will. *Bract*. fol. 60 b. *Condidit*; he made (a will). The name of a plea in the English ecclesiastical courts.

CONDICTIO. Lat. [from *condicere*, to summon; *denuntiare*.] In the civil law. A personal action; an action against the person, in which the plaintiff complains that something ought to be given to him; (*dicimus condictionem actionem in personam esse, quod actor intendit dari sibi oportere*.) *Inst.* 4. 6. 15. Sometimes called *condictitia actio*; an action of condictio. *Inst.* 3. 15. 1. This sense of the word is admitted in the Institutes to be an abuse (*abusivè dicimus condictionem*) of its original meaning, which was a denunciation or summoning, the word being derived from *condicere*, which, in the old language, signified to denounce, or summon a party to appear on a certain day to receive judgment. *Inst.* 4. 6. 15. *Theoph. in loco.* *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1145. *Hallifax, Anal.* b. 3, ch. 1, nu. 5.

CONDICTIO CERTI. Lat. In the civil law. An action which lies upon a promise to do a thing, where such promise or stipulation is certain, (*si certa sit stipulatio*.) *Inst.* 3. 16. pr. *Id.* 3. 15. pr. *Dig.* 12. 1. *Bract*. fol. 103 b. *Fleta*, lib. 2, c. 60, § 23.

CONDICTIO EX LEGE. Lat. In the civil law. A personal action, arising from a particular law. This had place when an obligation had been introduced by a new law, and no particular action had been expressed by which that obligation might be enforced. *Dig.* 13. 2. *Cod.* 4. 9. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1155. *Hallifax, Anal.* b. 3, ch. 1, num. 16.

CONDICTIO INDEBITI. Lat. In the civil law. An action to recover back money paid by mistake, as *not* being due (*indebitum*) to the party who received it. *Inst.* 3. 15. 1. *Dig.* 12. 6. 1. *Cod.* 4. 5. *Fleta*, lib. 2, c. 60, § 1. It approaches very nearly to our action for money had and received. *Cooper's Notes*, (*594,) on *Inst. ub. supra*. 1 *Kames' Equity*, 307. *Heinecc. El. Jur. Civ.* lib. 3, tit. 28, § 991. *Bell's Dict.*

CONDICTIO REI FURTIVÆ. Lat. In the civil law. An action which lay to recover a thing stolen, against the thief himself, or his heir. *Inst.* 4. 1. 19. *Dig.*

13. 1. *Cod.* 4. 8. *Heinecc. El. Jur. Civ.* lib. 4, tit. 1, § 1062. *Bract.* fol. 103 b.

CONDICTIO SINE CAUSA. Lat. In the civil law. An action which lay in favor of a person who had given or promised a thing without consideration (*causa*). *Dig.* 12. 7. *Cod.* 4. 9.

CONDITIO. Lat. A condition. *Bract.* fol. 19, 47, *et passim*. See *Condition*.

Conditio beneficialis quæ statum construit, benigne, secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte, secundum verborum proprietatem est accipienda. A beneficial condition which creates an estate is to be construed favorably, according to the intention of the words; but an odious condition which destroys an estate, is to be taken strictly, according to the precise meaning of the words. 8 *Co.* 90. *Shep. Touch.* 134.

Conditio dicitur, cum quid in casum incertum, qui potest tendere ad esse aut non esse, confertur. A condition is said to be where any thing is annexed having reference to an uncertain event, which may tend to create or destroy it. *Co. Litt.* 201.

Conditio (præcedens) adimpleri debet priusquam sequatur effectus. A condition precedent ought to be fulfilled before the effect can follow. *Co. Litt.* 201.

CONDITION. [Lat. *conditio*.] A restraint annexed to a thing, so that, by the non-performance of it, the party to the condition shall receive prejudice and loss, and by the performance, commodity and advantage.* *West's Symb.* par. 1, lib. 2, sect. 156. *Termes de la Ley.* *Cowell.*

A *modus*, quality or qualification annexed to an estate, interest or right, whereby it may be created, enlarged or defeated upon an uncertain event.* *Co. Litt.* 201 a. 2 *Crabb's Real Prop.* 792, § 2127. 2 *Bl. Com.* 151. 1 *Steph. Com.* 276. 4 *Kent's Com.* 121.

The definition of Lord Coke, from which the above is slightly modified, is in these words: "Condition—*est modus*, is a quality annexed by him that hath estate, interest or right to the same, whereby an estate, &c. may either be defeated, or enlarged or created, upon an uncertain event." *Co. Litt. ub. sup.* Strictly, *modus* and *conditio* are not, in all cases, convertible terms. The difference between them is shown in Bracton. *Bract.* fol. 18 b, 19. See *Modus*.

The most express words of condition, as given by Littleton, are the following:

Upon condition, (sub conditione). *Litt.* sect. 328. *Co. Litt.* 203 a.

Provided always, (provisio semper). *Litt.* sect. 329.

So that, (ita quod). *Id. ibid.*

That if it happen, (quod si contingat). *Id.* 330.

The use of any of these words in a deed (except the last, *Litt.* sect. 331, *Co. Litt.* 204 a;) makes an estate upon condition. See *Estate upon condition*. There are other words which sometimes amount to a condition, and sometimes not; such as *if*, (*si*); *for*, (*pro*); *by reason*, (*causâ*). *Co. Litt.* 204 a. *Si* (if) was the great characteristic word of a condition in the old law. *Fleta*, lib. 3, c. 9, § 4. The word *that*, (*ut*), was the proper word to express a *modus*, and *because*, (*quia*), to express a consideration. *Id. ibid.* *Co. Litt. ub. sup.* The words *to do*, or *that he shall do*, (*ad faciendum*), and *doing*, or *on his doing*, (*faciendo*); *to pay* (*ad solvendum*); *with that intention*, (*ad intentionem*); *to the effect*, (*ad effectum*); *for the purpose*, (*ad propositum*); make a condition in a will, but not in a deed. *Co. Litt.* 204. 2 *Crabb's Real Prop.* 802, § 2143; 803, § 2145. 4 *Metcalf's R.* 525, 526. 2 *Hilliard's Real Prop.* 357, 358.

CONDITION EXPRESSED, or CONDITION IN DEED. A condition expressed in the deed by which it is created, (*conditio expressa*). 2 *Crabb's Real Prop.* 792, § 2127. *Bract.* fol. 47. A condition annexed by express words, to any feoffment, lease or grant. *Termes de la Ley.* As where a feoffment or lease is made, reserving a rent payable at a certain day, with a proviso, that if it is not paid on that day, the feoffor or lessor may enter, this is a condition expressed, or condition in deed. *Id.* 2 *Crabb's Real Prop. ub. sup.* *Litt.* sect. 325. 4 *Kent's Com.* 123. Called also, formerly, an *actual condition*. *Termes de la Ley.*

CONDITION IN DEED, or CONDITION IN FACT. [Fr. *condition en fait*.] A condition expressed in a deed, (as a feoffment, lease, or grant,) in plain words, or legal terms of law. *Cowell.* *Co. Litt.* 201 a. See *Condition expressed*.

CONDITION IMPLIED, or CONDITION IN LAW. A condition not expressed in words, but implied by law; a tacit condition, (*conditio tacita*). *Bract.* fol. 47. As if a grant be made to a man of an office generally, without adding other

words, the law tacitly annexes hereto a secret condition, that the grantee shall duly execute his office. *Litt.* sect. 328, 378. 2 *Bl. Com.* 152. 2 *Crabb's Real Prop.* 804, § 2146. *Termes de la Ley.* Anciently also called a condition covert. *Id.* So it was a tacit condition annexed to every tenancy, that the tenant should not do any act to the prejudice of the reversion. 4 *Kent's Com.* 122.

CONDITION IN LAW. [*L. Fr. condition en ley.*] A condition tacitly created [or annexed to a grant,] by law, without any words used by the party. *Co. Litt.* 201 a, 234 b. See *Condition implied.* A limitation is called by Littleton a condition in law. *Litt.* sect. 380. 2 *Bl. Com.* 155. See *Limitation.*

CONDITION PRECEDENT. A condition preceding an estate.* A condition which must happen, or be performed, before the estate to which it is annexed can vest or be enlarged. As if a man grant to his lessee for years, that, upon payment of a certain sum within the time, he shall have the fee, this is a condition precedent, [that is, the condition precedes the estate in fee,] and the fee does not pass until the money be paid. 2 *Bl. Com.* 154. *Co. Litt.* 217. *Termes de la Ley.* 1 *Steph. Com.* 277—281. 2 *Wooddes. Lect.* 86. 2 *Crabb's Real Prop.* 792, § 2128. 4 *Kent's Com.* 125. 2 *Dallas' R.* 317. Conditions precedent must be strictly performed. See 1 *Kernan's R.* 25.

CONDITION PRECEDENT. In the law of contracts. A condition preceding the accruing of a right or liability.* An act essential to be performed by one party, prior to any obligation attaching upon another party, to do or perform another given act. *Holthouse. Chitty on Contracts*, 738.

CONDITION SUBSEQUENT. A condition following an estate.* A condition annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated.* *Co. Litt.* 201. 2 *Bl. Com.* 154. As if a man grant an estate in fee simple, reserving to himself and his heirs a certain rent, and that if the rent be not paid at the times limited, it shall be lawful for him and his heirs to re-enter and avoid the estate; this is a condition subsequent, the estate of the grantee being defeasible, if the condition be not performed.* *Litt.* sect. 325. 2 *Bl.*

Com. 154. 1 *Steph. Com.* 278. 4 *Kent's Com.* 125. *United States Digest*, Condition I. (c). Whether a condition be precedent or subsequent, does not depend upon any precise form of words, or their place in the deed, but must be determined by the whole instrument. 1 *Wisconsin R.* 527. 2 *Selden's R.* 74, 80. The precedence of conditions must depend on the order of time in which the intent of the transaction requires their performance. *Id. ibid.* Conditions subsequent in deeds are not favored. 15 *Georgia R.* 103.

CONDITION INHERENT. A condition annexed to the rent reserved out of the land whereof the estate is made; [or rather to the estate in the land, in respect of rent, &c.] *Shep. Touch.* (by Preston), 118.

CONDITION COLLATERAL. A condition where the act to be done is a collateral act. *Shep. Touch.* 118.

CONDITION AFFIRMATIVE. A condition which consists in doing a thing; as, provided that the lessee shall pay rent, &c. *Shep. Touch.* 118.

CONDITION NEGATIVE. A condition which consists in not doing a thing; as, provided that the lessee shall not alien, &c. *Shep. Touch.* 118.

CONDITION RESTRICTIVE. A condition for not doing a thing; as that the lessee shall not alien or do waste, or the like. *Shep. Touch.* 118.

CONDITION COMPULSORY. A condition expressly requiring a thing to be done;* as that a lessee shall pay 10*l.* such a day, or his lease shall be void. *Shep. Touch.* 118.

CONDITION SINGLE. A condition to do one thing only. *Shep. Touch.* 118.

CONDITION COPULATIVE. A condition to do divers things. *Shep. Touch.* 118.

CONDITION DISJUNCTIVE. A condition requiring one of several things to be done. *Shep. Touch.* 118.

CONDITIONAL CREDITOR. In the civil law. A creditor having a future right of action, or having a right of action in expectancy. *Dig.* 50. 16. 54.

CONDITIONAL FEE. A fee restrained, in its form of donation, to some particular heirs, exclusive of others; as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral heirs, or to the heirs male of his body, in exclusion both of collaterals and

lineal females also. 2 *Bl. Com.* 110. 1 *Steph. Com.* 226. It was called a *conditional* fee, by reason of the *condition* expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. 2 *Bl. Com.* 110. It was a fee simple, on condition that the donee had issue, [or the prescribed heirs]. *Id. ibid.* 4 *Kent's Com.* 11, 12. Under the statute *De donis*, conditional fees were changed into estates tail. *Id.* 11, *et seq.* 444. In the United States, conditional fees have generally partaken of the fate of estates tail, and have not been revived. In South Carolina, however, they still exist. *Id.* 16, 17. 1 *Hilliard's Real Prop.* 97, 98.

CONDITIONAL LIMITATION. A species of limitation of an estate, partaking of the nature of a condition. 4 *Kent's Com.* 127. As if a condition subsequent be followed by a limitation over to a third person, in case the condition be not fulfilled, or there be a breach of it, that is termed a conditional limitation. *Id.* 126. Sometimes considered as the same with a remainder. *Id.* 128, notes. *Id.* 249, 250.

This term is used in other senses than the foregoing. Thus it is said, that a conditional limitation is where an estate is so expressly defined, and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 *Steph. Com.* 278. And to this class are referred all base fees, and fees simple conditional at the common law. *Id. ibid.*

CONDITIONAL STIPULATION. In the civil law. A stipulation to do a thing upon condition, as the happening of any event. *Sub conditione stipulatio fit, cum in aliquem casum differtur obligatio.* *Inst.* 3. 16. 4.

CONDITIONES. Lat. Conditions. *Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium.* Any conditions are odious, but especially those which are against [in restraint of] marriage and commerce. *Loff's R.* Appendix, 644.

CONDITIONS OF SALE. The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale. See *Babington on Auctions*, 233—243.

CONDONARE. Lat. In old English law. To forgive; to remit. *Omnes fines qui injuste et contra legem terræ facti sunt nobiscum,—omnino condonentur;* all fines

which have been made with us unjustly and against the law of the land, shall be wholly remitted. *Mag. Cart. Johan. c. 55.*

CONDONATION. [Lat. *condonatio*, from *condonare*, to forgive.] In ecclesiastical law. Forgiveness. The forgiveness, by a husband or wife, of a breach of marital duties on the part of the other, as of acts of adultery or cruelty. *Shelford, Marr. & Div.* 436, 445. It is either express or implied; express, when signified by words or writing, and implied from the conduct of the parties, as where, for instance, the injured party, after reasonable knowledge of the infidelity of the other, continues to live with him or her, in a state of matrimonial connection, or renews such connection when it has been suspended.* *Id.* 445. *Sanchez de Divortio*, lib. 10. disp. 5, cited *ibid.* 1 *Haggard's Eccl. Rep.* 130. 2 *Kent's Com.* 101, and notes. It is called a conditional forgiveness, being accompanied by an implied condition that the injury shall not be repeated. 3 *Hagg. R.* 639, 351. *Id.* 733, 752. 4 *Paige's R.* 460.

CONDUCTERE. Lat. In the civil law. To hire. *Dig.* 19. 2. 6, 8, 60, 61, 62.

CONDUCT. See *Safe conduct*.

CONDUCT MONEY. In English practice. Money paid to a witness who has been subpoenaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. *Lush's Pract.* 460. *Archb. New Pr.* 639.

CONDUCTI ACTIO. Lat. In the civil law. An action which the hirer (*conductor*) of a thing might have against the letter, (*locator*). *Inst.* 3. 25, pr. 2. Otherwise called *ex conducto actio*. *Dig.* 19. 2. 15. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 929. See *Conductio*.

CONDUCTIO. Lat. [from *conducere*, to hire.] In the civil law. A hiring. Used generally in connexion with the term *locatio*, a letting. *Locatio et conductio*, (sometimes united as a compound word, *locatio-conductio*); a letting and hiring. *Inst.* 3. 25. *Dig.* 19. 2. 1, 2. *Bract.* fol. 62, c. 28. *Story on Bailments*, §§ 8, 368. See *Locatio*.

CONDUCTOR. Lat. [from *conducere*, to hire.] In the civil law. A hirer. *Inst.* 3. 25. pr. & 5, 6. *Dig.* 19. 2. 11, 15. *Fleta*, lib. 2, c. 59, § 1. 2 *Kent's Com.* 586, note. *Conductor militum*; a presser of soldiers. *Cro. Car.* 71.

CONDUCTUS. Lat. [from *conducere*,

to hire.] Hired. *Res conducta*; *conductum*; a thing hired. *Bract.* fol. 62.

CONE AND KEY. [*Cone* or *colne*, Sax. an account.] A phrase (partly Saxon, or early English,) used by Bracton in describing the privileges which a certain age gave a female in his time. *Femina in tali etate*, (i. e. 14 vel 15 annorum,) *potest disponere domui suæ, et habere Cone et Keye.* *Bract.* fol. 86 b. A woman at such an age, (14 or 15,) may take charge of her house, and have *cone and key*; (that is, keep the accounts and keys). *Spelman.* A somewhat similar qualification in the son of a burgess is mentioned by Glanville, (lib. 7, c. 9); and also by Bracton in another passage. *Bract.* fol. 86 b, ¶ 2. See *Fleta*, lib. 1, c. 11, § 7. Some copies read *cover et keye*, as to which *Spelman* expresses a doubt. His own MS. copy of Bracton had *cone aut keye*. According to Lord Coke, "*cover et keye*" is the true reading, that is, *cofer and keye*; meaning that a woman at the age mentioned was able to discern what things were in a household, fit to be kept in *cofer*, under lock and key. 2 *Inst.* 203. See 1 *Reeves' Hist. Eng. Law*, 284, note. See *Key*.

CONFEECION, *Confexion*, *Confecioun*. L. Fr. In old English law. A, or the making or execution of a written instrument. *Britt.* c. 28. *Confeccion d'la chartr*; the making of the charter. *Id.* c. 93. *Confecioun.* *Yearb.* P. 1 Edw. II. 5.

CONFECTIO. L. Lat. [from *conficere*, to make; L. Fr. *confeccion*.] In old English law. A, or the making or execution of a charter, deed or other written instrument. *Bract.* fol. 39 b, 398. *Fleta*, lib. 2, c. 61, § 16. *Plowd.* 108 a. *A confectiōne*; from the making. 5 *Co.* 1. 1 *Ld. Raym.* 480.

CONFEDERACY. [L. Lat. *confederatio*, a leaguering together; from *con*, and *federatio* from *fædus*, a league.] A combination between two or more persons to do any hurt or damage to another, or to do any unlawful thing.* *Termes de la Ley.* In criminal law, usually termed *conspiracy*, (q. v.)

In equity pleading, the charge of a *confederacy* between the defendant and other persons to injure the complainant, is one of the formal parts of a bill. *Story's Eq. Pl.* § 29.

CONFEDERATION. [L. Lat. *confederatio*; see *confederacy*.] Union by league or mutual contract; federal compact. See *Articles of confederation*.

CONFESSIO. Lat. A confession. *Confessio in judicio*; a confession made in, or before a court.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any proof. *Jenk. Cent.* 102.

Confessus pro judicato est, qui quodammodo sua sententia damnatur. One who confesses is held as adjudged, who is in a manner condemned by his own sentence, [being, in a manner, self-condemned.] *Dig.* 42. 2. 1. More briefly expressed, *Confessus in jure pro judicatis haberi placet.* *Cod.* 7. 59. This maxim of the civil law is adopted by Lord Coke, in the following words: *Confessus in judicio pro judicato habetur, et quodammodo sua sententia damnatur.* One who makes a confession in court is considered as having judgment passed upon him, and is, in a manner, condemned by his own sentence. 11 *Co.* 30. The peculiar meaning of the words *in judicio* seems to have been misapprehended in most of the translations of these maxims. See *In judicio, Judicium*.

CONFESSION AND AVOIDANCE. In pleading. The admission of the truth of a statement of fact contained in the pleading of the opposite party, coupled with the allegation of a new fact, which obviates or repels its legal effect, and thus avoids it.* A pleading framed upon this principle is called a pleading *in confession and avoidance*, or *by way of confession and avoidance.* *Steph. Plead.* 52, 198, 200. 3 *Bl. Com.* 310. Thus, where a release is pleaded in bar to a declaration, the plaintiff may reply, admitting the execution of the release, but avoiding the legal effect of that fact, by stating a new fact, viz. that it was obtained by fraud or the like.* The admission, however, in these cases is never made in express terms, though it must always be distinctly implied in, or inferable from the matter of the pleading. *Steph. Pl.* 200.

CONFESSION. [Lat. *confessio*, from *confiteri*.] In criminal evidence. Acknowledgment of guilt or agency. See 1 *Greenl. Evid.* § 213, et seq. *United States Digest*, Evidence in criminal cases. *Burr. Circ. Ev.* 495.

CONFESSO. See *Pro confesso*.

CONFESSORIA ACTIO. Lat. In the civil law. An action for enforcing a servitude. 1 *Mackeld. Civ. Law*, 352, § 321. *Heinecc. El. Jur. Civ.* lib. 4, tit. 6, § 1185. See *Actio confessoria*.

CONFESSUS. Lat. One who has confessed. See *Confessio*.

CONFICERE. Lat. [from *con*, together, and *facere*, to make.] In civil and old English law. To make or execute, as a deed or other written instrument. *Dig.* 27. 1. 45. 3. *Conficiendus*; to be made. *Towns. Pl.* 97. *Confectus*; made. *Profert chartam tali die confectam*; he produces a deed made on such a day. *Bract.* fol. 57 b.

CONFIDENTIAL COMMUNICATION. See *Privileged communication*.

CONFIRM. See *Confirmare, Confirmation*.

CONFIRMARE. Lat. [from *con*, together, and *firmare*, to strengthen.] In old English law and conveyancing. To confirm; to make firm, or strong, (*firmum facere*; *Litt.* sect. 520); to give additional strength or validity.

Confirmare was used as an ordinary word in deeds of gift, in the time of Bracton. *Dedi et concessi, et hac presenti charta mea confirmavi*; I have given and granted, and by this my present charter have confirmed. *Bract.* fol. 34 b. In this application, it merely signified to give additional strength to what was already strong, and to give it at the same time, that is, by the same instrument; thus strictly preserving the etymology of the word; (*con*, together, or *simul*.) *Est confirmare id quod prius firmum fuit simul firmare.* *Id. ibid.* It is used in the same sense in *Magna Charta*, (c. 1). *Concessimus Deo, et hac presenti charta nostra confirmavimus.*

Confirmare was afterwards used as the effective word in deeds of confirmation, properly so called. See *Confirmation*. *Noverint universi, &c. me A. de B. ratificasse, approbasse et confirmasse, &c.* Know all men, &c. that I, A. of B. have ratified, approved and confirmed. *Litt.* sect. 515. In this latter application, *confirmare* signified to make strong that which before was weak or defective. As early as the time of Fleta, the definition given by Bracton (*supra*) was modified so as to read, *Confirmare est id quod prius infirmum fuit simul firmare.* *Fleta*, lib. 3, c. 14, § 5. And this is quoted by Lord Coke. *Co. Litt.* 295.

Confirmare nemo potest prius quam jus ei acciderit. No one can confirm before the right accrues to him. 10 *Co.* 48.

Confirmat usum qui tollit abusum. He confirms the use [of a thing] who removes the abuse [of it]. *Moor*, 764.

CONFIRMATIO. Lat. [from *confirmare*, q. v.] In old English law. A confirmation. *Confirmatio est prioris juris et dominii adepti firmatio, cum prima firmitate donationis; nihil enim novi attribuit, sed jus vetus consolidat et confirmat.* A confirmation is a making firm of a former right and ownership already obtained, with the first strength of the gift, [i. e. with all the strength it could have had from the original gift]; for it confers nothing new, but consolidates and confirms the old right. *Bract.* fol. 58.

Confirmatio est nulla, ubi donum prece- dens est invalidum. A confirmation is null, where the preceding gift is invalid; that is, it has no effect to strengthen a void estate. *Co. Litt.* 295 b. See *Confirmation*.

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. A confirmation supplies all defects, although that which has been done was not originally valid. *Co. Litt.* 295 b. In Fleta, the maxim is given in fewer words: *Confirmatio omnem supplet defectum.* Confirmation supplies all defect. *Fleta*, lib. 3, c. 3, § 7. *Confirmatio supplet defectum.* *Bract.* fol. 271.

CONFIRMATIO PERFICIENS. L. Lat. In old English law. A perfecting confirmation. A confirmation which tends and serves to confirm and make good a wrongful and defeasible estate, [by adding the right to the possession, or defeasible seisin,] or to make a conditional estate absolute, [by discharging the condition]. *Shep. Touch.* (by Preston), 311.

CONFIRMATIO CRESCENS. L. Lat. In old English law. An increasing or enlarging confirmation. A confirmation which tends and serves to increase and enlarge a rightful estate, and so to pass an interest, [viz. an estate]. *Shep. Touch.* 311.

CONFIRMATIO DIMINUENS. L. Lat. In old English law. A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services whereby a tenant doth hold, [operating as a release of part of the services]. *Shep. Touch.* 311.

CONFIRMATIO (or CONFIRMATIONES) CHARTARUM. Lat. Confirmation of the charters. The title of a statute passed 25 Edw. I. confirming *Magna Charta*, and the Charter of the Forest, and by which the former is directed to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral

churches, and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word, deed or counsel, act contrary thereto, or in any degree infringe it. 1 *Bl. Com.* 128. It is in the form of a charter or letters patent. *Crabb's Hist. Eng. Law*, 173. 2 *Reeves' Hist.* 101, 102. *Barringt. Obs. Stat.* 173.

CONFIRMATION. [Lat. *confirmatio*, q. v.] In conveyancing. A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unvoidable, or whereby a particular estate is increased [and enlarged]. *Co. Litt.* 295 b. *Litt. sect.* 515, 516. 2 *Bl. Com.* 325. 1 *Steph. Com.* 482. *Shep. Touch.* 311. *Termes de la Ley.* An approbation of, or assent to an estate already created, by which the confirmor strengthens and gives validity to it, as far as it is in his power. *Gilb. Tenures*, 75. *Butler's Co. Litt.* lib. 3, note 253. The most common and proper words of making it are "have ratified, approved and confirmed," (*ratificasse, approbasse et confirmasse*.) *Litt. sect.* 515. *Shep. Touch.* 311. These are the operative words, although it is usual to insert the words "given and granted," also. *Watkins on Conv.* 221.

A confirmation belongs to that class of conveyances termed *secondary* or derivative, and is nearly allied to a release. 2 *Bl. Com.* 324, 325. How it differs from a release, see *Watkins on Conv.* 219. *Litt. sect.* 516, *et seq.* There are implied as well as express confirmations, the former being made by construction of law. *Co. Litt.* 295 b. *Shep. Touch.* 311. The party making a confirmation is sometimes called the *confirmor*, and he to whom it is made the *confirmée*. *Id. ibid.*

CONFIRMAVI. Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation. *Fleta*, lib. 3, c. 14, § 5.

CONFISCARE. Lat. [from *con*, with, and *fiscus*, treasury; properly used only in the passive, *confiscari*.] In civil and old English law. To confiscate; to claim for, or bring into the fisc, or treasury, (*fisco vendicare*). *Bract.* fol. 150. In the civil law, goods are said to be confiscated (*confiscari*), which are gathered into the treasury, (*quæ in fiscum coguntur*). *Brissonius*, citing *Dig.* 48. 21. 8. Money was said to be *confiscated*, when it was actually deposited in the coffers (*in loculis*) of the treasury. *Id.* citing *Suet. Aug.* c. 101.

CONFISCATE. [Lat. *confiscatum*, *confiscata*.] Confiscated; forfeited to the treasury or exchequer of the king or state; seized as forfeited. *Termes de la Ley. Staundf. Pl. Cor.* lib. 3, c. 24. *Cowell.* 1 *Bl. Com.* 299. See *To confiscate*, *Bona confiscata*.

To CONFISCATE. [Lat. *confiscare*, from *con*, with, and *fiscus*, a treasury.] To adjudge to be forfeited to the public treasury; to condemn private forfeited property to public use. *Webster*.—To convert or appropriate private property to the use of the state, as being forfeited; to transfer private property to the *fisc*, or public treasury, on the ground of its being forfeited.* See 1 *Kent's Com.* 56, 59. Debts are sometimes said to be confiscated. *Id.* 62. See *Confiscation*. *Confisk*, (q. v.) is an obsolete form of this word.

* * "To confiscate" and "to forfeit" have been called synonymous terms, and have been so used. *Blount*. *Chase*, J. 3 *Dallas' R.* 199. This is on the authority of Lord Coke, who observes that *confiscare* and *forisfacere* are *synonyma*. 3 *Inst.* 227. As used in modern law, however, there seems to be a clear distinction between them; *to forfeit* being properly applied to the act of the individual, and the consequent condition of his property; *to confiscate*, to the action of the state thereon. The individual *forfeits*; the property itself is *forfeited*; the state *confiscates* it as forfeited. Property cannot be confiscated without being legally forfeited, but it may be forfeited without being confiscated, as where a forfeiture is not taken advantage of. Where property is forfeited, it does not vest in the government, until after a seizure, which then relates back to the time of the forfeiture. 1 *Story's R.* 109. The term "confiscate" is derived from the Roman law, in which it imported actual deposit in the treasury. See *Confiscare*.

CONFISCATION. The act of condemning and adjudging to the public treasury. *Webster*.—The appropriation (usually by formal sentence of condemnation,) of private property to the use of the state; as being legally forfeited; the seizure and transfer of forfeited private property to the *fiscus* or public treasury.* See *Confiscare*.

This term is sometimes used as the synonyme of *forfeiture*. *Blount*, voc. *Confiscate*. But it is rather the consequence of forfeiture, or forfeiture taken advantage of, and acted upon. It is founded upon for-

feiture, and cannot exist without it, and therefore perhaps properly includes it; but a forfeiture may take place without confiscation following, as where it is waived or remitted.* See *To confiscate*.

CONFISK. An old form of *confiscate*. "Goods *confisked*, that is to say, which the thief attained for stealing another thing, (for if it be for stealing the same goods, they are said to be *forfeit* and not *confisked*,) disclaimeth to have any property in." *Finch's Law*, b. 3, c. 17.

CONFLICT OF LAWS. [*Lat. conflictus legum.*] In international law. The opposition between the municipal laws of different countries or states, in the case of an individual who may have acquired rights, or become subject to duties within the limits of more than one state. *Brande.* 2 *Kent's Com.* 110, *et seq.* *Story's Conflict of Laws, passim.* The *conflictus legum* is the most perplexing and difficult title of any in the jurisprudence of public law. 2 *Kent's Com.* 110.

CONFRAIRE. Fr. In old English law. A fraternity, brotherhood or society. *Cowell.*

CONFRERES. [*Lat. confratres.*] In old English law. Brethren in a religious house; fellows of one and the same society. *Stat. 32 Hen. VIII. c. 24. Cowell.*

CONFUSIO. *Lat.* [from *confundere*, to pour together.] In the civil law. Confusion; a pouring or fusing together; a mixture of liquids or metals. *Inst.* 2. 1. 27. One of the modes of acquiring property in goods, and distinguished from *commixtio*, which properly was the intermingling of dry substances, as corn. *Inst.* 2. 1. 27, 28. *Bract.* fol. 10. *Fleta*, lib. 3, c. 2, § 15. There might be two sorts of *confusio*, viz. of similar substances, as of the wine of one man with the wine of another, or the gold of one with the gold of another; or of dissimilar substances, as wine with honey, or gold with silver. In either case, if the materials were mingled by mutual consent, or fortuitously without the consent of the owners, the whole mass as mingled was common to both. *Inst.* 2. 1. 27. See *Commixtio, Confusion*.

CONFUSION. In the common law. The intermixture of the goods of two persons, so that the several portions can be no longer distinguished. 2 *Bl. Com.* 405. The term and, in a great degree, the doctrine, are borrowed from the *confusio* of the civil law. The meaning of the former, however,

has been so far modified as to include not only the intermixture or interfusion of liquids and metals, (the *confusio* proper of the civil law,) but also that of dry articles, (properly expressed in the same law by the term *commixtio*). The doctrines also of the two systems so far differ, that while the civil law allows a party who wilfully intermixes his property with that of another, without his approbation or consent, a satisfaction for what he has so improvidently lost, the common law allows him nothing, but gives the entire property to the other party. 2 *Bl. Com.* 405. *Inst.* 2. 1. 28. 2 *Steph. Com.* 85. 2 *Kent's Com.* 364. *United States Digest*, Confusion. See *Confusio, Commixtio*.

CONFUSION. In the civil and common law. The blending or union of the characters of debtor and creditor in the same person; the union of the obligation of the debtor with the right of the creditor, which dissolves or extinguishes the former. *Heinecc. Elem. Jur. Civ.* b. 3, tit. 30, § 1006. *Ersk. Inst.* lib. 3, tit. 4, § 23. Thus, where a woman obligee marries the obligor, the debt is extinguished. 1 *Salk.* 306.

CONGÉ, Counge, Congy. Fr. and L. Fr. In old English law. Leave; liberty or permission. *Par congé ou sauns congé*; by leave or without leave. *Britt.* c. 48. *Sauns counge.* *Id.* c. 12. *Fet Assaver*, § 42.

In French maritime law. The passport of a vessel. *Jacobson's Sea Laws*, 71.

A commission, or permission to navigate, equip or arm a vessel. *Ord. Mar.* liv. 1, tit. 1, art. 3.

CONGÉ D'ACORDER. L. Fr. [*Lat. licentia concordandi.*] In old English practice. Leave to accord, or agree. One of the formalities anciently observed in levying a fine. When the original writ was delivered in presence of the parties, before the justices, a countor, or pleader, said, "Sir Justice, *congé d'accorder*;" which was praying for leave to agree. *Stat. Modus levandi fines*, 18 Edw. I. stat. 4. 2 *Rever's Hist. Eng. Law*, 224. *Crabb's Hist. Eng. Law*, 178. *Termes de la Ley.* *Cowell.* *Blount.* 2 *Bl. Com.* 350. See *Licentia concordandi, Fine*.

Congé d'accorder is mentioned by Britton as a proceeding in ordinary actions. *Volons que parties pleadaunts priaunts congé de accorder en nostre court eyent a ceo congé, forsque en cas de felonies*; we will that parties pleading praying leave to agree in our

court, shall have leave for that purpose, except in cases of felonies. *Britt. c. 74.*

CONGÉ D'EMPARLER. L. Fr. [L. *Lat. licentia loquendi.*] In old English practice. Leave to imparl (or emparl). *Yearb. M. 11 Hen. VI. 6.*

CONGÉ D'ESLIRE, (or D'ELIRE.) L. Fr. [L. *Lat. venia eligendi.*] In English law. Leave to elect. The royal license or permission, sent to a dean and chapter, when any bishopric becomes vacant, empowering them to proceed to the election of a new bishop. *Termes de la Ley. Cowell. Blount. 1 Bl. Com. 379, 382. 3 Steph. Com. 61, 67.*

CONGEABLE. Fr. [from *congé*, leave, or permission.] In old English law. That which is done with leave; lawfully done; lawful. *L'entry est congeable*; the entry is lawful. *Litt. sect. 693—695. Cro. Jac. 31.* So long as a disseisee maintained his entry by continual claim, his entry was said to be *congeable*. *Crabb's Hist. Eng. Law, 403. Litt. sect. 422.* This term was first introduced in the reign of Edward III. *3 Reeves' Hist. Eng. Law, 22.*

CONGILDONES. L. Lat. In Saxon law. Fellow members of a gild. *Spelman, voc. Geldum.* See *Gild*.

CONGIUS. Lat. An ancient measure containing about a gallon and a pint. *Cowell. Blount. Cart. Edmundi Regis, A. D. 946, cited ibid.*

CONGRESS. [Lat. *congressus*, from *congrēdi*, to come together.] An assembly of persons; an assembly of envoys, commissioners or deputies. An assembly of representatives from different governments, to concert measures for their common good, or to adjust their mutual concerns.* *Webster.*

In American law. The national legislature of the United States, consisting of the Senate and House of Representatives. *1 Kent's Com. 221, et seq.*

CONINGERIA. L. Lat. In old records. A rabbit-warren. *Inquis. 47 Hen. III. n. 32. Cowell.*

CONJECTIO. Lat. [from *conjicere*, to throw together.] In the civil law of evidence. A throwing together. Presumption; the putting of things together, with the inference drawn therefrom. *Matth. de Prob. c. 1, n. 43.*

CONJECTIO CAUSÆ. Lat. In the Roman law. The throwing together of a cause. A brief, summary statement of a cause, made to the judge by the advocates

for the respective parties, as introductory to the argument of it at length. *Dig. 50. 17. 1. Aul. Gell. Noct. Att. lib. 5, c. 10, § 9. Calv. Lex.* Answering somewhat to the modern term "opening."

CONJECTURA. Lat. [from *conjicere*, to throw together.] In the civil law of evidence. A presumption. *Conjectura ducta ab eo quod ut plurimum fit*; a conjecture or supposition, drawn from what commonly happens. *Heinecc. ad Pand. pars 4, sect. 124. Præsumptiones sunt conjecturæ ex signo verisimili ad probandum assumptæ*; presumptions are conjectures drawn from probable evidence, for the purpose of proof. *J. Voet. ad Pand. lib. 22, tit. 3, n. 14.* Literally, a throwing or putting together; a putting of one fact with another, so as to show their relation, and indicate the consequence or inference. "Put this and that together," is a common expression to indicate an inference. See *Burr. Circ. Evid. 27, note (c).*

A conjecture or surmise. A slight degree of credence, arising from evidence too weak or too remote to produce belief. *Best on Presumptions, 13, note. Rationabile vestigium latentis veritatis unde nascitur opinio sapientis*; a reasonable trace of latent truth, from which the opinion of a prudent person may take its rise. *Maseard. de Prob. vol. 1, qu. 14, nu. 14, cited ibid.* It is weaker than *suspicio*.

CONJECTURE. [Lat. *conjectura*, q. v.] Supposition or surmise. The idea of a fact, suggested by another fact, as a possible cause, concomitant or result. *Burr. Circ. Evid. 27.* The lowest degree of presumption. *Domat's Civ. Law, part 1, b. 3, tit. 6, sect. 4, art. 2.*

CONJICERE. Lat. [from *con*, together, and *jacere*, to throw or cast.] To throw together; to put together. See *Conjectio*.

CONJUDEX. L. Lat. [from *con*, together, and *judez*, a judge.] In old English law. An associate judge. *Rex tali et judicibus suis salutem*; the king to such a judge and his associates, greeting. *Bract. fol. 403.*

CONJUGAL RIGHTS. See *Restitution of conjugal rights*.

CONJUGIUM. Lat. [from *con*, together, and *jugum*, a yoke.] One of the names of marriage, among the Romans. *Taylor's Civ. Law, 284.*

CONJUNCT. [from Lat. *conjunctus*.] In Scotch law. Joint. *Ersk. Inst. b. 3, tit.*

8, § 34, *et seq.* Applied to rights. *Bell's Dict.*

Connected. Applied to persons. *Id.* *voc. Conjunct person.*

CONJUNCTA. Lat. [from *conjungere*, to join together.] In the civil law. Things joined together or united; as distinguished from *disjuncta*, things disjoined or separated. *Dig.* 50. 16. 53.

CONJUNCTIM. Lat. In old English law. Jointly. *Inst.* 2. 20. 8. *Bract.* fol. 19. More closely rendered by the Scotch *conjunctly*. 2 *Kames' Equity*, 292. *Conjunctim tenens*; a joint tenant. *Reg. Jud.* 12 b. *Conjunctim et pro indiviso*; jointly and individually. 2 *Mod.* 63.

CONJUNCTIM ET DIVISIM. L. Lat. In old English law. Jointly and severally. *Bract.* fol. 19. *Dyer*, 62 a. *Yelverton*, 203. 2 *Crabb's Real Prop.* 692, § 1974. In the civil law, the phrases *conjunctim et disjunctim*, and *conjunctim et separatim* were used. *Brissonius*.

CONJUNCTIO. Lat. [from *conjungere*, to join together.] In the civil law. Conjunction; connection of words in a sentence. See *Dig.* 50. 16. 29, 142.

CONJURARE. Lat. [from *con*, together, and *jurare*, to swear.] To swear together; to combine or confederate under oath.

CONJURATIO. Lat. [from *conjurare*, q. v.] In old English law. A swearing together; an oath administered to several together; a combination or confederacy under oath. *Cowell. Blount. Tomlins.*

In old European law. A compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other, and which was the basis of the commune. *Steph. Lect.* 119.

CONJURATION. [Lat. *conjuratio*.] In old English law. A plot or compact made by persons combining by oath to do any public harm. *Cowell.*

The offence of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. *Stat.* 5 *Eliz.* c. 16. *Cowell.* Classed by Blackstone with witchcraft, enchantment and sorcery, but distinguished from each of these by other writers. 4 *Bl. Com.* 60. *Cowell.*

CONJURATOR, CONJURATUS. Lat. [from *conjurare*, q. v.] In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; (L. Fr. *conjurour*). *Flota*, lib. 2, c. 47, § 6. *Britt.* cc. 27, 120.

CONNIVANCE. [from Lat. *connivere*, to wink the eye.] Literally, a winking at; intentional forbearance to see a fault or other act; generally implying consent to it. *Webster.*

CONNOISSEMENT. Fr. [Lat. *litera recognitionis*.] In French maritime law. A bill of lading. *Ord. Mar.* liv. 3, tit. 2. *Emerig. des Ass.* ch. 11. Otherwise called *police de chargement*. *Ord. Mar. ub. sup.*

CONNUBIUM. Lat. [from *con*, together, and *nubere*, to marry.] In the civil law. Marriage; a mutual submission to the marriage ceremony. *Cooper's Justin. Inst. Notes*, *420. One of the names of lawful marriage between citizens, among the Romans. *Adam's Rom. Ant.* 50, 502. *Taylor's Civ. Law*, 284.

CONOCIAMENTO. Span. In Spanish law. A recognizance. *White's New Recop.* b. 3, tit. 7, ch. 5, § 3.

CONPOSSESSIO. Lat. In modern civil law. A joint possession. *Mackeldey's Civ. Law*, 245, § 236.

CONQUÆRERE. L. Lat. [from *con*, together, and *quærere*, to seek or gain.] To acquire. In classical Latin, *conquirere*, which originally signified to seek diligently; afterwards, to acquire. *Calv. Lex.*

CONQUÆSTOR. L. Lat. [from *conquærere*, q. v.] Conqueror. The title of William I. of England. 2 *Bl. Com.* 243. See *Conqueror*, *Conquest*.

CONQUÆSTUS, *Conquestus*. L. Lat. [from *conquærere*, q. v.] In feudal law. Acquisition or purchase; any means of acquiring an estate out of the course of inheritance; conquest. *Craig*, lib. 1, tit. 10, § 18. 2 *Bl. Com.* 242. *Id.* 48. See *Conquest*.

The conquest of England by William I. *A conquestu Angliæ. Bract.* fol. 90, 209, 382. *Ante conquestum*, in *conquesta et post*; before the conquest, at the conquest, and after. *Id.* fol. 7.

CONQUERER. L. Fr. In old English law. To acquire; to gain; to get possession of. *Et son seignieur conquerra la terre la mere par son p'pre intrusion*; and his lord shall acquire the land of the mother by his own intrusion. *Britt.* c. 31. *Puis que son patron avera conquis son droit del presentment*; after his patron shall have acquired his right of presentment. *Id.* c. 94. *Ne purra rien conquerre*; shall gain nothing. *Id.* c. 96. *Que il ad conquis par sa propre force*; which he hath acquired by his own wrong. *Id.* c. 100. *L'eyne nequedent con-*

querra p' brefe de droit; the eldest nevertheless shall recover by writ of right. *Id.* c. 119.

CONQUEREUR. L. Fr. [from *conquerer*, q. v.] In Norman and old English law. The first purchaser of an estate; he who first brought an estate into his family. *Grand. Coust. Gloss.* c. 25, p. 40. 2 *Bl. Com.* 243. *Id.* 48. *Le primer conquereur des treis kantrefs de la tere de Breckenoch estoit Bernard de Nefmarche, Norman*; the first purchaser of the three cantrefs of the land of Brecknock was Bernard of Newmarch, a Norman. 1 *Mon. Angl.* 319 b. *Blount*.

CONQUEROR. [L. Fr. *conquerour*; L. Lat. *conquestor*, *conquestor*, *conquisitor*, qq. v.] In old English and Scotch law. The first purchaser of an estate; he who brought it into the family owning it. 2 *Bl. Com.* 242, 243. "If conquest lands, after the decease of the *conquerour*, do ascend to any person," &c. *Skene de Verb. Sign.* voc. *Conquestus*. Clearly formed from the L. Fr. *conquerer*, (q. v.) According to Blackstone, William the Norman was called "The Conqueror," to denote that he was the first of his family who acquired the crown of England. 2 *Bl. Com. ub. sup.* Spelman more explicitly says that he was called *Conquestor*, (Conqueror,) because he conquered, that is, acquired or purchased England, not because he subdued it, (*non quod subegit*). *Gloss.* voc. *Conquestus*. And, in another passage, that he was called "Conqueror," because he succeeded to the crown of England, not by hereditary right, but under the will of Edward the Confessor, that is, (according to the old French idiom,) by *quest* and *conquest*, commonly called *purchase*. *Id.* voc. *Questus*. See *Conquest*.

CONQUEROR. Lat. In old pleading. I complain. *Conqueror quod talis mihi injuste detinet—talem rem*; I complain that such a one unjustly detains from me such a thing. An old form of declaring. *Bract.* fol. 102 b. *Si tenens conqueratur*; if the tenant complain. *Id.* fol. 156 b.

Conquerentes; plaintiffs, parties complaining. *Stat. Marlbr.* c. 30. *Fleta*, lib. 2, c. 3, § 1.

CONQUEST. [L. Lat. *conquestas*, *conquestus*, *conquisitio*, *conquisitum*, from *conquirere*, or *conquerere*, to get together, as by the labor of several, to get together by one's own labor or diligence, (*con*, together, and *querere*, to seek.) *Spelman*, voc. *Questus*.] In feudal and Scotch law. Purchase or acquisition; any means of acquiring an

estate out of the common course of inheritance. *Craig de Jur. Feod.* lib. 1, tit. 10, § 18. *Dalrymple, Feuds*, 210. 1 *Kames' Equity*, 210. *Ersk. Inst.* b. 3, tit. 8, § 14. 2 *Bl. Com.* 242. *Id.* 48. In Scotch law, *conquest* has always been distinguished from *heritage* or *succession*. *Bell's Dict.* voc. *Succession*.

An estate itself, so purchased or acquired. Otherwise termed *acquest*. 1 *Reeves' Hist. Eng. Law*. 29.—That which we possess, not by transmission from ancestors, but as acquired by labor, money or economy. *Spelman*, voc. *Conquestus*. And see *Skene de Verb. Sign.* voc. *Conquestus*. In Scotch law, property acquired by a man during marriage was called *conquest*, in contradistinction to property which he succeeded to as heir to an ancestor, or executor to a person deceased. *Ersk. Inst.* b. 3, tit. 8, § 43. The term was used in the same sense, in the capitularies of the old French kings, and other records of the same early period. Conquests are acquisitions of goods made during marriage, (*acquisitions de biens faictes durant le mariage*). *Lindembrog. in Capit. Carol.* lib. 4, c. 74. *Conquest* is called by another old writer, *acquest* made by any one, with his money, labor, industry and means, without the tenure of succession from ancestors. *Nicod. in Dict.* *Spelman* (voc. *Questus*), calls this "the ancient and genuine signification of the word."

* * According to Sir William Blackstone, (who is followed by Mr. Stephen,) the term *conqueror* was originally applied to William I. and *conquest* to his mode of acquiring the crown of England, in the proper feudal sense of those terms, (as already explained, *supra*), rather than with reference to the success of his arms. 2 *Bl. Com. ub. sup.* 1 *Steph. Com.* 355. This interpretation has been construed by some later writers into an unwillingness, on the part of the commentator, to acknowledge that the English or Saxons were actually *conquered*, in the modern and ordinary acceptance of the word; and some pains have been taken to prove this to have been the fact. 1 *Chitt. Bl. Com.* 48, note. Mr. Wharton, in his recently published *Law Lexicon*, speaks of "the attempt to give to the word *conquest* the meaning of *acquisition* in a feudal sense," as a "mere idle ingenuity," and goes into a historical argument to show that "as applied to the Norman establishment," it "means, and literally

was warlike subjugation by force of superior military tactics." *Wharton's Lex. voc. Tenure*. But, whatever may be said of the historical fact, the etymology of the term itself, and its acknowledged use in feudal, Norman and early English law, demonstrate its original meaning to have been *acquisition*, without reference to the exercise of superior military force. The opinion of Blackstone is sustained by the high authority of Sir Henry Spelman, who has conclusively shown that "victory" and "military subjugation" are comparatively modern senses, which the word has illegitimately (*ceu per adulterium*.) acquired. *Gloss. vocc. Conquestus, Questus*.

From what cause, and by what process the term *conquest* came to lose its original, and acquire its modern sense, or, in other words, how and when it came to be disused in English law, and exclusively adopted as a word in ordinary language, cannot now be easily explained. Spelman adopts the opinion that, as the enforcement of the Conqueror's acquired right to the crown was accomplished by means of the signal victory obtained over Harold and the Saxons, the ideas of *victory* and *subjugation* become so strongly attached to his peculiar title of *Conquestor* as gradually to obscure, and finally to supplant its original and proper meaning. That *conqueror* continued to be used after the Norman invasion in its technical sense, appears from the passage already quoted under that word, from the *Monasticon Anglicanum*. That the verb *conquerer* was used in the same sense as late as the time of Edward I. will appear from the passages given from Britton, under that word. As a general head of law, however, the same writer expresses the idea of acquisition by the act of the party, by the word *purchas*, the English form of which is still retained in modern law, in the same sense. *Britt. cc. 33, 35, 36, 38*. *Conquest* is used in the sense of subjugation, by King Henry IV. in his declaration of thanks on being made king. 1 *How. St. Trials*, 154. Lord Bacon appears to use the word in both senses, in the following passage: "When any king obtaineth by war any country whereunto he hath right by birth, he is ever in upon his ancient right, not upon his *purchase by conquest*." Arg. Case of the Postnati of Scotland, *Works*, iv. 356. In the Scotch law, the word *conquest* has come down to modern times, in its full original sense as a

term of jurisprudence. See *supra*. An "heir of conquest" is said to be so called "because his right of succession is confined to the subjects which the ancestor himself had *acquired or conquered* by some singular title." *Ersk. Inst. b. 3, tit. 8, § 14*. See *Heir of conquest*.

CONQUESTOR. Lat. [from *conquerere*, q. v.] In old English law. Conqueror. The title of William I. *Spelman*, voc. *Conquestus*.

CONQUISITIO. L. Lat. [from *conquerere*, q. v.] In feudal and old English law. Acquisition. *Spelman*, voc. *Conquestus*. 2 *Bl. Com.* 242. See *Conquestus, Conquest*.

CONQUISITOR. L. Lat. [from *conquerere*, q. v.] In feudal law. A purchaser, acquirer or conqueror. 2 *Bl. Com.* 242, 243.

CONSANGUINEUS. Lat. [from *con*, together, and *sanguis*, blood.] In civil and old English law. Connected by blood, (*sanguine connexus*). *Dig.* 38. 16. 1. 10. Sprung from the same blood, (*eodem sanguine natus*;) of kin. *Co. Litt.* 157 a. Distinguished from *affinis*, (connected by marriage). 2 *Steph. Com.* 285. *Ad propinquiores consanguineum*; to the next of kin. *Bract.* fol. 91.

A cousin, in the general sense of blood relative. *Reg. Orig.* 226. See *Cousin*. *Breve de consanguineo*; a writ of cousinage. *Id.* See *Cousenage*.

CONSANGUINEUS FRATER. Lat. In feudal law. A brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side. 2 *Bl. Com.* 231.

CONSANGUINITY. [Lat. *consanguinitas*, from *consanguineus*, (q. v.); *cognatio*, from *con*, together, and *natus*, born.] Connection of blood.* Kindred or alliance in blood. 2 *Bl. Com.* 202. Relation by blood, as affinity is relation by marriage. 1 *Bl. Com.* 434. *Co. Litt.* 157 a.

The connection or relation of persons descended from the same stock or common ancestor, (*vinculum personarum ab eodem stipite descendit*). 2 *Bl. Com.* 202. It is of two kinds; lineal and collateral. See *Lineal consanguinity, Collateral consanguinity*.

CONSCIENCE, COURTS OF. Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise, and more commonly called *Courts of Requests*. 3 *Steph. Com.* 451. See *Requests*.

CONSEILL. L. Fr. In old French law. Counsel. *Assiz. de Jerus.* c. ix. xxvii.

CONSEILLER. Fr. and L. Fr. In old English and French law. A counsellor. *Ord. Mar.* liv. 1, tit. 3. *Conseillers ou countours*; counsellors or countours. *Britt.* c. 52.

SENSUAL CONTRACT. In civil law. A contract formed by the mere consent (*consensus*), of the contracting parties; such as marriage. *Pothier, Contr. of Sale*, part 1, sect. 1. *Poth. Obl.* part 1, ch. 1, sect. 1, art. 2. *Hallifax, Anal.* b. 2, ch. 18. *Broom's Max.* 214.

SENSUS. Lat. [from *consentire*, to think together, to be of the same mind.] Consent. *Bract.* fol. 15 b, 16.

Consensus est voluntas multorum ad quos res pertinet, simul juncta. Consent is the united will of many to whom a thing belongs. *Dav. R.* 48. The words *simul juncta*, in this sentence, are treated and translated in Branch's *Principia* and Wharton's *Lexicon*, as referring to *res*, instead of *voluntas*, which has led in the latter work to the following singular translation:—"Consent is the will of the many, to whom the thing joined at the same time belongs."

Consensus non concubitus facit matrimonium [nuptias.] Consent, not lying together, constitutes marriage. 6 Co. 22. *Co. Litt.* 33 a. The consent of the contracting parties, [that is, their mutual agreement to live together as husband and wife], and not carnal intercourse, forms the essence of the marriage contract. *Shelf. Marr. & Div.* 7. A contract to marry *per verba de presenti*, though not followed by cohabitation, amounts to a valid marriage. 2 *Kent's Com.* 87. 1 *Dow's P. Rep.* 148. 7 *Wendell's R.* 47. *Broom's Max.* 213, [379]. More briefly expressed, *Consensus facit matrimonium*.

This maxim is, in substance, and almost in words, the same with that of the civil law. *Nuptias non concubitus, sed consensus facit.* *Dig.* 50. 17. 30. *Id.* 35. 1. 15.

Consensus tollit errorem. Consent removes error, [i. e. obviates its effect]. *Co. Litt.* 126 a. 2 *Inst.* 123. The acquiescence of a party who might take advantage of an error, obviates its effect. *Broom's Max.* 58, [100]. Thus, though a venue be wrongly laid, or a writ erroneously directed, if it be done or followed by the consent of the parties, and so entered of record, it shall stand; and no objection can after-

wards be taken to it. *Cro. Eliz.* 664. *Co. Litt.* 126 a, and *Hargr.* note. 1 *Bing. N. C.* 68. On this maxim rests the doctrine of *waiver*. See *Waiver*. Consent, however, will not confer jurisdiction. 3 *Comstock's R.* 9.

Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutavit. A person [under duress,] does not seem [is not considered,] to have retained his consent, though he may have made some change in the terms imposed on him by the party threatening.* Although choice and election be a badge of consent, yet, if the first ground of the act be duress, the law will not construe that the duress doth determine, if the party duressed do make any motion or offer. *Bacon's Max.* 89, *regula* 22. Therefore, if a party menace me, except I make unto him a bond of 40*l.* and I tell him that I will not do it, but I will make unto him a bond of 20*l.* the law shall not expound this bond to be voluntary, but shall rather make construction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion, notwithstanding, into the lesser. But if I will draw any consideration to myself, as if I had said, I will enter into your bond of 40*l.* if you will deliver me that piece of plate, now the duress is discharged; and yet, if it had been moved from the duressor, who had said at the first, you shall take this piece of plate and make me a bond of 40*l.* now the gift of the plate had been good, and yet the bond shall be avoided by duress. *Id. ibid.*

The meaning of this maxim is made perfectly clear by the exposition of Lord Bacon. Its fundamental idea obviously is *variation* by the party duressed *from the terms imposed* by the duressor, which is wholly lost sight of in the following translations: "He does not appear to have consented, who changed any thing through the menaces of a party threatening." *Branch's Princ.* "He does not appear to have retained consent, if he have changed any thing through the menaces of a party threatening." *Wharton's Lex.*

SENT. [Lat. *consensus*, from *consentire*, to think together.] A concurrence of wills.* *Pothier, Contr. of Sale*, part 2, sect. 1, art. 3. See *Consensus*. An agreement to something to be done or proposed to be done, as to marriage. Distinguished in this respect from *assent* and *approbation*.

Ambl. 256, 258. See *Assent*. Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good or evil on each side. 1 *Story's Equity Jurisp.* § 222. The consent of parties, which is of the essence of the contract of sale, consists in a concurrence of the will of the seller to sell a particular thing to the buyer for a particular price, and of the buyer to buy of him the same thing for the same price. *Pothier, ub. sup.* See *Consensus*, and the maxims *ibid.*

CONSENTIRE. Lat. [from *con*, together, and *sentire*, to think.] To consent; to think with another; to have, or be of the same mind; to agree to, or with.*

Non consentit qui errat. He who errs does not consent. *Bract.* fol. 44. Consent given under the influence of error is not valid.* If consent be obtained by meditated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind. 1 *Story's Eq. Jurisp.* § 222. See *Non videntur qui errant consentire*.

Consentire matrimonio non possunt infra [ante] annos nubiles. Parties cannot, consent to marriage within the years of marriage, [before the age of consent]. 6 *Co.* 22.

Consentientes et agentes pari pena plectentur. They who consent to an act and they who do it, shall be visited with equal punishment. 5 *Co.* 80.

CONSENT RULE. In practice. A stipulation in the form of a rule, which a defendant in an action of ejectment enters into, at the time he enters an appearance, in which he specifies for what premises he intends to defend, and also undertakes to confess upon the trial, not only the fictitious lease, entry, and ouster mentioned in the declaration, but that he (if he defend as tenant, or if he defend as landlord, then that his tenant,) was at the time of the service of the declaration in the possession of such premises; and that if, upon the trial, the defendant shall not confess such possession, as well as lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the defendant, then no costs shall be allowed for not further prosecuting the same, but the defendant shall pay the taxed costs to the plaintiff. This is the present form of the rule in England. *Chitt. Archb. Prac.* 750. *Archb. New Prac.* 323. 3 *Steph. Com.* 673.

CONSEQUENTIAL DAMAGES. Damages following an act, but not the direct

and immediate result of it.* 3 *Bl. Com.* 153. 3 *Steph. Com.* 462.

CONSEQUENTS. In Scotch law. Things which follow, usually by implication of law.* A commission being given to execute any work, every power necessary to carry it on is implied. 1 *Kames' Equity*, 242.

CONSERVATOR. Lat. and Eng. [from *conservare*, to preserve.] A protector, preserver or maintainer. "Conservator of rivers and fish in rivers." *Hals de Jur. Mar.* pars 1, c. 5. See *infra*.

An arbitrator, or umpire. *Kennell's Par. Ant.* 513. *Cowell*.

In Connecticut, a guardian is so called. 5 *Conn. R.* 280. 12 *Id.* 376. 19 *Id.* 591.

CONSERVATOR OF THE PEACE. [Lat. *conservator vel custos pacis*.] A preserver or keeper of the public peace.

* * * There were formerly, in England, two kinds of conservators of the peace; (1,) those who had this power annexed to other offices which they held, and (2,) those who had it merely by itself, and were thence named *custodes* or *conservatores pacis*. Those that were so *virtute officii* still continue, such as judges, sheriffs, coroners and constables, within their respective jurisdictions. Those that were, without any office, simply and merely conservators of the peace, either claimed that power by prescription, or were bound to exercise it by the tenure of their lands, or lastly, were chosen by the freeholders in full county court before the sheriff. The election of these officers was taken from the people, and given to the king in the reign of Edward III.; but they continued to be called *conservatores*, wardens, or keepers of the peace, till the statute 34 *Edw. III.* c. 1, gave them the power of trying felonies, when they acquired the more honorable appellation of *justices*.* *Lambard. Eirenarch.* 12—23. 1 *Bl. Com.* 349—351. 3 *Steph. Com.* 38, 39. *Bacon's Use of the Law*, 11, 12. See *Justices of the peace*.

CONSERVATOR OF TRUCES AND SAFE-CONDUCTS. [L. Lat. *conservator induciarum et salvorum regis conductuum*.] An officer anciently appointed in every port in England, whose duty was to inquire of all offences done against the king's truce and safe-conducts, (such as the breaking of truces and safe-conducts, and abetting and receiving the truce breakers, which were declared to be treasons. *Stat. 2 Hen. V.*

st. 1, c. 6. 4 *Bl. Com.* 69.) *Termes de la Ley. Cowell.* These offences, when committed at sea, they were empowered to hear and determine according to the ancient marine law, then practised in the admiral's court; when committed within the body of a county, to determine, with two men learned in the law of the land, according to that law. 4 *Bl. Com.* 69. Their powers were afterwards given by statute 29 Hen. VI. c. 2, to the lord chancellor, associated with either of the chief justices. And see *Stat. 31 Hen. VI. c. 4*, which is still in force. 4 *Bl. Com.* 70. 4 *Steph. Com.* 245.

CONSIDERARE. L. Lat. In old English law. To consider; to declare, as the result of deliberation; to adjudge; to give judgment. *Considerabitur pro querente*; judgment shall be given for the plaintiff. *Fleta*, lib. 2, c. 53, § 2. See *Consideratum est*.

CONSIDERATIO CURLE. Lat. The consideration of the court; that is, the judgment of the court, implying deliberation and study. A phrase often used in the old books, statutes and pleadings. *Stat. Marlbr. c. 1. Ad audiendum considerationem curiæ*; to hear the judgment of the court. *Bract.* fol. 383 b. *Fleta*, lib. 2, c. 3, § 9.

CONSIDERATION. [L. Lat. *consideratio*; Lat. *causa*; Fr. *causé*.] In the law of contracts. The material cause of a contract, without which no contract is binding. *Termes de la Ley. Cowell. Dyer*, 336 b. *Plowd.* 309. *Dig.* 2. 14. 7. 1, 2. *Code Civil*, liv. 3, tit. 3, sect. 4, § 1131. *Smith on Contracts*, 88, note. 2 *Ad. & Ell. N. S.* 851. Called in Scotch law, (after the civil law,) "cause." *Bell's Dict.* Otherwise defined or described as follows:

The reason which moves the contracting party to enter into the contract. 2 *Bl. Com.* 443.

The thing given in exchange for the benefit which is to be derived from a contract; the compensation, *quid pro quo*, or equivalent, answering to the *permutatio* of the civil law, or more closely perhaps to the Gr. *εναλλάγμα*; something mutually or reciprocally interchanged, though not necessarily of equal value.* 2 *Bl. Com.* 444. 2 *Steph. Com.* 112. *Gravina*, lib. 2, § 12. *Cowell.* 2 *Kent's Com.* 463.

The price or motive of the contract. 2 *Bl. Com.* 443, 444. 1 *Archb. Nisi Prius*, 3.

The inducement to the contract. 2 *Kent's Com.* 463.

Any benefit accruing to him who makes the promise, or any loss, trouble or disadvantage undergone by, or charge imposed upon him to whom it is made. *Smith on Contracts*, 87, 88. 2 *Kent's Com.* 465. 1 *Archb. N. Prius*, 14, 15. *Broom's Max.* 341. See *Good consideration*, *Valuable consideration*, *Express consideration*, *Implied consideration*, *Executed consideration*, *Executory consideration*.

CONSIDERATUM EST. Lat. (It is considered.) In practice. The style of judgments in actions at law, [for the emphatic words in which they were entered on record,] implying that the judgment is not that of the court, but the act of the law, pronounced and declared by the court, after due deliberation and inquiry. 3 *Bl. Com.* 396. *Co. Litt.* 39 a. 1 *Ld. Raym.* 147, 148. *Consideratum fuit*; it was considered. *Bract.* fol. 85. *Fleta*, lib. 2, c. 3, § 9. *Consideratum est per curiam*; it is considered by the court. The proper words of judgment at common law. *Litch*, 83. *Id.* 189.

CONSIDERATUR. L. Lat. It is considered. Held to mean the same with *consideratum est*. 2 *Stra.* 874.

CONSIGN. [from Lat. *consignare*, to seal.] In mercantile law. To send or transmit goods to a merchant or factor for sale.* The radical meaning of the word seems to be, to deliver or transfer, as a charge or trust. *Webster.*

CONSIGNARE. Lat. In the civil law. To seal; to seal up, as money in a bag, in order to be deposited. *Consignato atque deposito.* *Cod.* 8. 14. 20. *Si pecunia in sacculo signato deposita sit*; if money be deposited in a sealed bag. *Dig.* 16. 3. 1. 36.

CONSIGNATION. [from *consignare*, to seal up.] In Scotch law. The payment of money into the hands of a third party, when the creditor refuses to accept of it. The person to whom the money is given is termed the *consignatory*. *Bell's Dict.*

In French law. A deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. It is not properly a payment, but it is equivalent to a payment, and extinguishes the debt no less than if an actual payment had been made. This is in accordance with the rule of the Code: *Obsignatione totius debite pecunie solemniter facta, liberationem contingere, manifestum est.* *Cod.* 8. 43. 9. *Poth. Obl.* part 3, ch. 1, art. 8.

CONSIGNEE. In mercantile law. The person to whom goods are consigned, shipped or otherwise transmitted for sale.* 2 *Ken's Com.* 540. 3 *Id.* 207, 215, 221. *Tomlins.*

CONSIGNMENT. In mercantile law. The transmission of goods to a consignee for sale. 3 *Ken's Com.* 216. In mercantile usage, the goods themselves.*

CONSIGNOR. In mercantile law. The person by whom goods or merchandise are consigned or shipped; the shipper.* 2 *Ken's Com.* 543. 3 *Id.* 207, 215. *Abbott on Ship.* [326.] 403.

CONSILE, Conseil. See *Counseil.*

CONSILIARIUS. Lat. [from *consilium*, advice.] In the Roman law. An adviser of a judge or magistrate; one who sat with him (*assessor*, q. v.) and assisted him with advice in the decision of causes. *Cod.* 1. 51. 14. He was distinguished from an *advocate*, and disqualified from acting as such. *Id. ibid.* See *Dig.* 1. 22. 5.

CONSILIARIUS. Lat. [from *consilium*, q. v.] In old English law. A counsellor or councillor. *Consiliarius vel advocatus*; counsellor or advocate. *Bract.* fol. 185. *Consiliarius et peritus in lege*; counsellor and learned in the law. *Cro. Jac.* 90. *Consiliarius et in lege eruditus*. 3 *Leon.* 237. *Consiliarius vel narrator*; counsellor or countor. *Bract.* fol. 412.

Consiliarii; counsel. *Auditis consiliariis*; counsel having been heard. *Dyer*, 140 b, (Fr. ed.).

CONSILIUM. Lat. Counsel; advice. *Pro consilio impendendo*; for counsel to be given. *Dyer*, 162 a. *Pro consilio impenso*; for counsel given. *Id.* 65 a. *Consilia multorum requiruntur in magnis*; the counsels of many are required in important matters. 4 *Inst.* 1.

The act of an accessory in advising another to commit a crime. *De forcia, consilio, præcepto, auxilio vel receptamento*; of force, counsel, commandment, aid or receipt. *Fleta*, lib. 1, c. 31, § 8.

Counsel; (an advocate). 5 *Co.* 20.

In old practice. An imparlance. 4 *Bl. Com.* 355, note (z).

CONSIMILI CASU. L. Lat. (In a like case.) In old English practice. The name of a writ of entry which lay where a tenant by the curtesy, or tenant for life, aliened in fee, or in tail, or for another's life. It was brought by him in the reversion against the party to whom such tenant so aliened to his prejudice, and in the ten-

ant's lifetime. *Termes de la Ley.* F. N. B. 206. *Roscoe's Real Act.* 95. *Cowell.* It derived its name from the circumstance of being framed under the authority of the statute of Westminster 2, c. 24, which provided that "as often as it shall happen in chancery that in one case a writ is found, and in a like case, (in *consimili casu*,) falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the chancery shall agree in making a writ," &c. 3 *Bl. Com.* 50. *Steph. Pl.* 7.

CONSISTORIUM. Lat. The state council of the Roman emperors. 1 *Mac-keld. Civ. Law*, 39, § 49.

A consistory, (q. v.)

CONSISTORY. [Lat. *consistorium*.] A session, assembly or council of ecclesiastical persons. *Blount.*

The highest council of state in the papal government. *Encycl. Amer.*

A spiritual court; otherwise called the consistory court, (q. v.)

CONSISTORY COURT. In English ecclesiastical law. A court held by every diocesan bishop in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses; and also, until recently, for granting probates and administrations. 3 *Bl. Com.* 64. 3 *Steph. Com.* 430, 431. 1 *Wooddes. Lect.* 86. It is held before the bishop's chancellor, or his commissary. *Hallifax Anal.* b. 3, ch. 10, nu. 12.

CONSOBRINI, Consobrinæ. Lat. In the civil law. Cousins german, in general; brothers' and sisters' children, considered in their relation to each other. *Consobrinus*; a male cousin. *Consobrina*; a female cousin. *Inst.* 3. 2. 1. *Id.* 3. 6. 2. *Cooper's Notes*, in loc.

In a stricter sense, cousins who are the children of two sisters, *quasi consororini*; (*qui ex duobus sororibus progeniuntur*). *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. Cousins, when they are the sons of brothers, are also called *fratres patruales*; when the daughters, *sorores patruales*. *Inst.* 3. 2. 1. *Id.* 3. 6. 2. *Cooper's Notes*, in loc. *Dig.* 38. 10. 10. 15.

CONSOLATO DEL MARE. Ital. [Fr. *consulat de la mer*.] The consulate of the sea. The title of a collection of European sea-laws, now generally considered the most ancient extant. See 12 *East*, 639, arg. As to its origin, different opinions have been entertained by the most learned jurists; some, with Grotius and Emerigon,

ascribing it to the ancient kings of Arragon; others contending, with Azuni, that it was framed at Pisa, in Italy. The precise date of its compilation is not known, but it seems to be certain that it was completed and in force as early as the eleventh century, and that during a succession of the ages that followed, it was received and obeyed as law by all the nations of Southern Europe. It has formed the basis of most of the subsequent collections of maritime laws, and is supposed to have still the force of law in the tribunals of Italy. 1 *Duer on Ins.* Introd. Discourse, lect. ii. 3 *Ken's Com.* 10—12. Story, J. 3 *Story's R.* 465, 479.

CONSOLIDATED FUND. The great public fund of the United Kingdom of Great Britain and Ireland, comprising the produce of customs, excise, stamps, and several other taxes, added to some small receipts from the royal hereditary revenue; and constituting almost the whole of the public income of the united kingdom.* 2 *Steph. Com.* 590. There were formerly three capital funds in existence; the aggregate fund, the general fund, and the South Sea fund. The consolidation of these into one, in the year 1787, on the new arrangement of the public accounts, gave the name to the new fund. *Id.*

CONSOLIDATION. [Lat. *consolidatio.*] In ecclesiastical law. The combination and union of two benefices in one. *Stat.* 37 *Hen. VIII.* c. 21. *Cowell*, voc. *Union*.

In the civil law. The union in the same person of the possession or profit (*usus fructus*) of lands, with the property (*proprietas*). *Termes de la Ley.* *Cowell.* See *Unity of possession*.

In Scotch law. The junction of the property and superiority of an estate, where they have been disjoined. *Bell's Dict.*

CONSOLIDATION. In practice. The combination of several actions into one; or of several causes of action of the same nature in one declaration.* If two or more actions at law be brought by the same plaintiff, at the same time, against the same defendant, for causes of action which may be joined, the court, on the motion of the defendant, will order them to be consolidated. 2 *Arch. Pr.* 198. 1 *Tidd's Pr.* 614. 1 *Burr. Pr.* 411.

CONSOLIDATION RULE. In practice. A rule made, on application of the defendants, and with the consent of the plaintiff, where several actions are brought

on the same policy of insurance, by which the plaintiff's proceedings are stayed in all the actions except one, upon the defendants' undertaking to be bound by the verdict in that action, and to pay the amount of their several subscriptions and costs, in case a verdict shall be given therein for the plaintiff. 1 *Tidd's Pr.* 614. *Chitt. Arch. Pr.* 966.

CONSORTIUM. Lat. [from *consors*, a partner, from *con*, together, and *sors*, a lot.] In the civil law. A union of fortunes; one of the names of lawful marriage, among the Romans. *Dig.* 23. 2. 1. *Tayl. Civ. Law*, 284. *Cooper's Justin. Inst. Notes*, *420.

A union of several persons as parties in an action. 1 *Mackeld. Civ. Law*, 197, *Kaufmann's Note*.

In old English law. Company; society. *Moor*, 817.

In pleading. The company or society of a wife. See *Per quod consortium amisit*.

CONSPIRACY. [Lat. *conspiratio.*] In criminal law. An agreement or combination between two or more persons, falsely to indict, or procure the indictment of another. This is the meaning of the term as used in the statute 33 *Edw. I.* st. 2; and still retained as descriptive of one species of the offence. 4 *Bl. Com.* 136. 4 *Steph. Com.* 265. 2 *N. Y. Rev. St.* [691.] 577, § 8, subd. 2.

In a more general sense, any confederacy of two or more persons to injure an individual, or do any other unlawful act or acts prejudicial to the community. *Steph. Crim. Law*, 70.—A combination or agreement between several persons, to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large. 4 *Steph. Com.* 265, and note. 4 *Chitty's Bl. Com.* 136, notes. 2 *N. Y. Rev. St. ub. sup.*

To constitute an indictable conspiracy, there must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means. 4 *Metcalf's R.* 111. But see 4 *Steph. Com. ub. sup.* The conspiracy itself constitutes the offence, though the purpose of it be not effected. *Wharton's Amer. Crim. Law*, 486. *Lewis' U. S. Crim. Law*, 206. *United States Digest*, Conspiracy.

CONSPIRATIONE. See *De Conspiratione*.

CONSPIRATORS. Persons guilty of the offence of conspiracy. Defined by the statute 33 *Edw. I. st. 2.* 2 *Reeves' Hist. Eng. Law*, 242. See *Conspiracy*.

CONSTABLE. [Fr. *conestable*; L. Lat. *constabularius*, *constabulus*, *conestabulus*, q. v.] A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 *Bl. Com.* 356. See *infra*. Constables are of two kinds, high and petty.

High constables, (*capitales constabularii*), in England, are officers appointed in every hundred or franchise, whose proper duty seems to be, to keep the king's peace within their respective hundreds. 1 *Bl. Com.* 356. 3 *Steph. Com.* 47. *Willcock, Off. Constable*, 1, 23. They are also, by various statutes, charged with other duties, such as that of serving precepts and warrants on certain occasions, and the returning of lists of jurors. 3 *Steph. Com.* 47.

Petty constables, (*subconstabularii*) are inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace, though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 *Bl. Com.* 356. 3 *Steph. Com.* 47, 48.

The high constable has the same duties to discharge in all parts of his hundred, as well within as out of the precincts of petty constables, as each petty constable has within his precinct. *Willcock, Off. Constable*, 23.

In the United States, constables are town and city officers, with powers similar to those of the constables of Great Britain. Besides their general common law office of conservators of the peace, they have other duties specially assigned them by statute, such as the execution of the process of justices' courts, and, in some cases, of process issued by other judicial officers; attending the sittings of courts, keeping juries, &c. High constables are also appointed in cities as chiefs of the constabulary force, and in some cases, also, with a certain rank and duty as executive officers of the corporation.* See *United States Digest*, Constable.

* Few terms of the English law have undergone a greater change in signification, since their first introduction, than *consta-*

ble, which is generally supposed to be derived, (through the Fr. *conestable*, Lat. *constabularius*), from *comes stabuli*, the title of an officer of the Roman empire, corresponding with that of the modern *master of the horse*. 1 *Bl. Com.* 355. See *Constabularius*. It was introduced into England by the Normans, who applied it first to that high officer of state created after the conquest, under the title of *Constable of England*, (q. v.) It was afterwards applied to various subordinate officers, uniting civil with military duties, such as the keepers of castles, &c.; and finally, to those officers of the peace in hundreds and tithings, which are considered the origin of the modern high and petty constables. The statute of Winchester, 13 *Edw. I.* (now repealed by 7 & 8 *Geo. IV. c. 37.*) after requiring every man "to have in his house *harness for to keep the peace*," and specifying the kind of armour, proceeds to ordain (c. 6,) that "in every hundred and franchise *two constables* shall be elected, to make the view of armour." This statute is considered by Blackstone and Spelman, as having first created the office of constables of hundreds, or high constables, as they are now generally termed. 1 *Bl. Com.* 355, 356. *Spelman*, voc. *Constabularius*. See 4 *Inst.* 267. Petty constables are considered by the same authors as having been first instituted about the reign of Edward III. These opinions, however, have been disputed, and the constable of the hundred has been held to have been an officer at the common law, before the statute of Winchester. *Powell, J.* 1 *Ld. Raym.* 1192, 1193. *Holt, C. J.* *Id.* 1195. 1 *Salk.* 175. The same has been held as to the petty constable. 4 *Inst.* 267. See *Bacon's Works*, iv. 309. Constables, indeed, are expressly mentioned in *Magna Charta*, and by Bracton, in connection with the sheriff, coroner and other royal bailiffs. *Magna Charta*, 9 *Hen. III. c. 17.* *Id. Johan. c. 24.* *Bract. fol. 337.* But these are supposed to have been constables of castles. 2 *Inst.* 31. So, the constable is mentioned in the statute of Westminster 1, c. 15; though Britton, whose work was written about the same time, in enumerating the county officers under the sheriff, viz. hundredors, serjeants and bedels, says nothing of the constable. *Britt. fol. 2.* It is the opinion of a late writer on this subject, that there was a series of officers, appointed under the title of *constable*, soon after the

Norman Conquest, with a regular gradation of rank, from the lord high constable to the constable of the smallest franchise, uniting military with civil powers; and that they were, in each case, commanders of the levies of their particular districts, in case of domestic tumults, or the incursions of robbers. *Willcock's Office of Constable*, Introd. On the whole, there seems little doubt that the office of constable, though partaking of many of the characteristics of the ancient Saxon peace officers, (the tithing man being little distinguishable from the petty constable,) is essentially of Norman origin. The military or half military character which has always belonged to it in England, (a decidedly Norman feature, as well as the name itself,) makes strongly in aid of this opinion. Under the statute of Winchester, it seems to have differed little from that of a modern militia inspector, and it is worthy of remark that the enrolment of the militia, providing them with quarters when called out, &c., form to this day in England part of the duties of a constable. *Stat. 52 Geo. III. c. 38.* See *12 Mod. 254. 5 Id. 427. Willcock's Off. Constable, 76, 78, 80.* Dr. Wooddesson concurs in the opinion of Blackstone, that the officers now called constables derived that appellation at or after the statute of Winchester; although it is his conclusion that the office itself, in substance and effect, subsisted from immemorial antiquity in the English laws. *1 Wooddes. Lect. 152, 153.* The opinion of Sir William Blackstone, that the modern office unites in itself those of the Saxon tithingman, and Norman constable, (properly so called,) is the one which perhaps best reconciles the different views which have been taken on this point of origin. *1 Bl. Com. 356.* See *Tithingman*.

CONSTABLE OF ENGLAND. [*L. Lat. constabularius Angliæ; L. Fr. constable d'Angleterre.*] Called, also, LORD HIGH CONSTABLE. A high officer of state, established in England on the Norman Conquest, whose duties partook both of a military and civil character. He was at the same time commander-in-chief of the forces of the kingdom, and keeper of the peace of the nation. *Crabb's Hist. Eng. Law, 101. Cowell. Lambard, cited ibid.* He had judicial cognizance of all contracts touching deeds or feats of arms, (*facta armorum*;) and of war out of the realm, and of all matters pertaining to arms or war with-

in the realm, which could not be determined by the common law. *Spelman, voc. Constabularius.* He had also the power of trying for high treason, and the especial right of regulating all trials by combat, tilts, tournaments, and other feats of chivalry. *Id. 1 Bl. Com. 355.* He was one of the great officers of state who sat in the *Aula Regis*; and, together with the lord mareschal, held also a separate court called the court of chivalry. *3 Bl. Com. 68. 4 Inst. 123. See Keilw. 170 b.*

The office of the Saxon *heretock*, as a chief military leader, corresponded, in some respects, with this of constable; and the barbarous epithet *stallarius* was, according to *Spelman*, given to it in imitation of the continental term *constabularius*, being made up from a similar derivation, (*Sax. stall, stabulum*). There is no doubt, however, that the office of constable of England was introduced by the Normans, being immediately derived from the similar office of constable of France, which was of high antiquity in that kingdom. *Spelman, voc. Constabularius. LL. Edw. Conf. c. 35, cited ibid.* It has been disused in England, except only upon great and solemn occasions, as the king's coronation and the like, ever since the attainder of Stafford, duke of Buckingham, under Henry VIII. *1 Bl. Com. 355.*

CONSTABLE OF SCOTLAND. This officer is mentioned in the introduction to King John's Magna Charta. *Alani de Galweya, constabularii Scottiæ.* The office seems to have been one of great antiquity, and to have carried with it a certain share of criminal jurisdiction. *Bell's Dict.*

CONSTABLE OF THE EXCHEQUER. An officer mentioned in *Fleta*, lib. 2, c. 31.

CONSTABLE OF A CASTLE. [*L. Lat. constabularius castelli or castrî; castellarius.*] In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a castellan. *Spelman, voc. Constabularius. Bract. fol. 69 b. Crabb's Hist. Eng. Law, 150.* See *Castellan. Constabularius castri de Dover, et quinque portuum. Co. Litt. 234 b. Mag. Cart. 9 Hen. III. cc. 19, 20. Id. Johan. c. 29. Constabularius castri Dovor, et custos quinque portuum*; Constable of Dover castle, and Warden of the Cinque Ports. *Reg. Orig. 185 b. Mem. in Scacc. P. 20 Edw. I.* This is still an official title. *Bracton* mentions the con-

stable of the tower of London. *Bract.* fol. 360 b. 361.

CONSTABLEWICK. In English law. The territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff. *5 Nev. & Man.* 261.

CONSTABULARIUS, CONSTABULUS, (called also *Constaulus, Conestabularius, Conestabulus, Conestablius, Conostabilus, Contostaulus, Conestalus, Comistabilis, Comestabulus*.) *L. Lat.* A master of the horse; (*præfectus stabuli*). *Spelman.* A commander-in-chief of horse; (*præfectus equitum*). *Id.*

A commander of any troop of horse; (*omni turma equestris præfectus*). *Id.*

A commander of foot; (*turma pedestris*;) a centurion or captain; (*capitaneus*). *Id.*

A naval commander; (*officialis marinus*). *Id.* and *voc. Admiralius.*

An officer having charge of military affairs; (*qui rem militarem curabat*). *Id.* See *Reg. Orig.* 88.

An officer assigned to guard or keep any place, (*qui loco alicui præsidio dabatur*;) as a castle or town, &c. *Spelman. Bract.* fol. 69 b. *Nullus constabularius, vel ejus ballivus, capiat blada vel alia catalla alicujus qui non sit de villa ubi castrum situm est*; no constable nor his bailiff shall take the corn or other chattels of any one who is not of the vill where the castle is situated. *Mag. Cart.* 9 Hen. III. c. 19. *Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri, ei, &c.*; no constable shall distrain any knight to give moneys for the guard of his castle, if, &c. *Id.* c. 20. *Id. Johan.* c. 29.

An officer whose military duties were connected with, or exercised in subervience to, the preservation of the public peace. Hence, (the military character being dropped,) the office of the modern constable.* See *Constable*.

* * This word is derived by *Spelman*, through the *Fr. conestable*, *Ital. conestabile*, from the *Lat. comes stabuli*, an officer in the Roman empire, who had the charge of the imperial stable; the master of the horse; (*præfectus stabuli veleguorum*;) originally called *tribunus stabuli*. *Spelman, voc. Constabularius. Ammianus Marcellinus*, cited *ibid.* This latter title is supposed to have become changed into that of *comes stabuli*, soon after the time of Constantine, and the union of these two words into one to have taken place about the tenth cen-

tury. *Constabulus* is used by *Regino*, an Italian writer at the beginning of the eleventh century, with the express admission of its being a corruption of *comes stabuli*. *Regino Chron.* lib. 2, *apud Spelman.* *Conestabulus* and *conestabulus* may have been previous forms of the word, but *constabularius* finally became the prevailing one. *Contostaulus, conestalus*, and *constaulus*, appear to be from the lower Greek *κοντοσταυλος, κονεσταυλος* and *κονεσταυλος*.

The changes which the meaning of this word successively underwent, from the time of its first formation, may be seen in the definitions already given. Its prevailing sense, on the continent, was that of *military commander*, or leader, with which was blended, on its introduction into England, that of *custodian* or *keeper of the peace*. A trace of the original office of the *comes stabuli* long survived in that of the Lord High Constable of England, as supervisor of all feats of arms performed on horseback, and judge in the court of *chivalry*. See *Constable of England*.

CONSTAT. *Lat.* It is clear or evident; it appears; it is certain; there is no doubt. *Non constat*; it does not appear. *Constat de persona*; there is certainty as to the person; there is no doubt about the person. *Inst.* 2. 20. 29. 4 *Bl. Com.* 323. *Nihil facit error nominis cum de corpore constat*. An error in the name amounts to nothing, when there is certainty as to the person. 6 *Co.* 65 b. 11 *Id.* 21. See *Quod constat, &c.* Sometimes used as a substantive. "With respect to the *constat* of property in the present case." *Sir W. Scott, The Aurora*, 3 *Rob. Adm. R.* 187. And see *infra*.

CONSTAT. *L. Lat.* In English law. A certificate which the clerk of the pipe and auditors of the exchequer make, at the request of any person who intends to plead or move in that court for the discharge of any thing; and the purport of it is to certify what *appears (constat)* on record, concerning the matter in question. *Stat.* 3 & 4 *Edw.* VI. c. 4. 13 *Eliz.* c. 6.

An exemplification under the great seal of the enrolment of letters patent; so called from its initial word. 5 *Co.* 54. *Co. Litt.* 225 b.

CONSTITUCION. *L. Fr.* The constitution or appointment of an attorney. *Britt.* c. 126.

CONSTITUENT. [*L. Lat. constituens.*] One who appoints or constitutes. The per-

son appointing an attorney in fact is called his constituent. See *Reg. Orig.* 20, 21.

CONSTITUERE. Lat. In old English law. To constitute or appoint. *Constitutus* (we have constituted, or appointed,) was the emphatic word in the ancient commissions of the judges in England. *Bract.* fol. 109—111.

To put in one's place; to constitute or appoint an attorney. *Attornavi et in loco meo constitui C. de D.*; I have attorned and put in my place C. of D. *Reg. Orig.* 172. *Constitute* is still an emphatic word in letters of attorney.

To put or place; to make an appearance. *Partibus in judicio constitutis*; the parties being placed (or having appeared) in court. *Bract.* fol. 257.

To establish or ordain. See *Constitutio*.

To undertake or engage to pay a debt. *Inst.* 4. 6. 9. *Dig.* 13. 5. See *Constitutum*.

CONSTITUTA PECUNIA. See *Constitutum*.

CONSTITUTIO. Lat. [from *constituere*, to establish; Gr. *ἀστέρις*.] In the civil law. An imperial ordinance or constitution, distinguished from *Lex*, *Senatus-consultum*, and other kinds of law, and having its effect from the sole will of the emperor. *Quod principi placuit legis habet vigorem. Quodcumque ergo imperator per epistolam constituit, vel cognoscens decrevit, vel edicto præcepit, legem esse constat. Hæc sunt quæ constitutiones appellantur.* That which has pleased the sovereign has the force of law. Whatever, therefore, the emperor has ordained by rescript, or decreed upon the hearing of any matter, or commanded by edict, is evidently law. These are what are called *constitutiones*. *Inst.* 1. 2. 6. (This passage is taken from *Dig.* 1. 4. 1, with some verbal alteration.) *Cooper's Notes*, in loc. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 2, § 51.

CONSTITUTIO. Lat. In old English law. An act, ordinance or statute; an establishment. *Stat. Marlbr.* c. 11. *Stat. Westm.* 1, pr. *Stat. de Bigamis*, pr. *Fleta*, lib. 1, c. 38, § 26. *Id.* lib. 2, c. 47, § 4. Bracton calls the statute of Merton, *constitutio de Merton*. *Bract.* fol. 227. *Fleta* applies the same term to *Magna Charta*, and to the statutes of Merton, *Marlbridge*, *Oxford* and *Westminster*. *Fleta*, lib. 2, c. 52, § 1; c. 57, § 7. *Id.* lib. 5, c. 24, § 4. *Id.* lib. 2, c. 47, § 13. *Id.* lib. 4, c. 29. *Id.* lib. 1, c. 18, § 2. *Id.* lib. 2, c. 67, § 19. *Id.* lib. 4, c. 5, § 11.

A provision of a statute. *Fleta*, lib. 2, c. 44, § 5. *Id.* lib. 3, c. 5, § 8.

Establishment; creation. *Constitutio dotis*; establishment of dower. *Fleta*, lib. 5, c. 23.

CONSTITUTION. [Lat. *constitutio*.] Establishment; appointment. See *Constituere*.

An established form of government. 1 *Bl. Com.* 50. 1 *Steph. Com.* 32. A system of fundamental rules, principles and ordinances for the government of a state or nation. *Webster*. The fundamental law of a state or nation.

In English law. A public act or ordinance, especially such as related to ecclesiastical matters. *Crabb's Hist. Eng. Law*, 248. 2 *Reeves' Hist. Eng. Law*, 78. See *Clarendon, Provincial constitutions, Legatine constitutions*.

CONSTITUTIONAL. Consistent with the constitution; not in conflict with the fundamental law of the state.

CONSTITUTUM. Lat. [from *constituere*, to undertake or engage.] In the civil law. A promise or undertaking, (called *pactum prætorium*,) without any preceding stipulation, to pay money due either by the promisor or another for whom he became surety. *Dig.* 13. 5. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1158. The action which lay upon such a promise was called *actio de pecunia constituta*. *Id.* *Inst.* 4. 6. 9.

CONSTRAINT. See *Duress*.

CONSTRUCTIO. Lat. Construction, (q. v.)

Constructio legis non facit injuriam. The construction of the law [a construction made by the law] works no injury. *Co. Litt.* 183. *Broom's Max.* 259. [464]. The law will make such a construction of an instrument as not to injure a party.

CONSTRUCTION. [Lat. *constructio*, from *construere*, to frame or put together.] Literally, a putting together. A putting together of the words of an instrument; an arrangement or marshalling of words or clauses, so as to extract, by a process of inference, the meaning or intent;* exposition; interpretation. The court give construction to language used in a written instrument; the jury determine the meaning of words used orally between the parties. 36 *Maine R.* 376.

This word is often used in the same sense with *interpretation*; and has indeed been defined by that word. See 1 *Kent's Com.* 460. *Sedgwick on Stat. and Const.*

Law, 225, chap. 6. *Webster*. A distinction, however, is sometimes made between the terms; *interpretation* being confined to the sense of the mere explanation of words as they stand, without reference to other considerations. The term *conjectura*, used by Grotius, has been considered by Mr. Duer as expressing the true idea of construction. *Grot. de Jur. Bell. lib. 2, c. 16.* 1 *Duer on Ins.* 215. But that Grotius himself used the term *interpretation* in a comprehensive sense, appears from the title of the chapter of his work referred to—*De Interpretatione*.

For the rules regulating the construction of statutes, see 1 *Kent's Com.* 460—469, and notes. *Sedgwick on Stat. and Const. Law*, chap. 6. *United States Digest*, Statutes. For the rules respecting the construction of contracts, see 2 *Kent's Com.* 554, *et seq.* For the rules respecting the construction of wills, see 4 *Kent's Com.* 534, *et seq.* *United States Digest*, Devise. And see 2 *Bl. Com.* 379—381.

CONSTRUCTIVE. Made out or deduced by construction; implied, inferred, construed or interpreted by law; as *constructive fraud*, *constructive notice*, &c. The opposite of formal, actual, positive or expressed.

CONSTRUCTIVE BREAKING into a house. A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud or conspiracy. 1 *Russell on Crimes*, 792—794.

CONSTRUCTIVE FRAUD. Fraud inferred by law, as distinguished from positive, actual or intentional fraud; fraud in law, as distinguished from fraud in fact.* 2 *Kent's Com.* 515, *et seq.* See *Fraud*.

By *constructive frauds* are meant such acts or contracts, as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with positive fraud; and therefore are prohibited by law, as within the same reason and mischief as acts and contracts done *malo animo*. 1 *Story's Eq. Jurisp.* § 258. See 4 *Sandford's* (N. Y. Superior Court) *R.* 287. *Burrill on Assignments*, 426, 427, (2d ed.).

CONSTRUCTIVE LARCENY. Larceny made out by construction, or inferred from the acts of a party, where the taking itself was not apparently felonious; as where

he obtained the delivery of the goods *animo furandi*. See *Larceny*.

CONSTRUCTIVE NOTICE. Notice inferred by law, as distinguished from actual or formal notice; notice in law; that which is held by law to amount to notice. See 6 *Ohio St. R.* 585. Actual notice to a party's attorney is constructive notice to the party himself. See *Notice*.

CONSTRUCTIVE TRUST. A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust; a trust implied or inferred from circumstances; otherwise called an *implied trust*, and sometimes a *resulting trust*, (qq. v.) Thus, if an estate be purchased in the name of one person, and the consideration money belong to, or be paid by another, the land purchased will be subject to a trust for the person to whom the money belonged. 1 *Sand. Us.* 212. 1 *Steph. Com.* 346. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property, cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment. *Hill on Trustees*, 116. 1 *Spence's Chancery*, 511.

CONSTRUE. [from Lat. *construere*.] To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See *To Marshal*.

CONSUETUDINARIUS. L. Lat. [from *consuetudo*, q. v.] In old English law. A ritual or book, containing the rites and form of divine offices, or the customs of abbeys and monasteries. *Whishaw*.

CONSUETUDINARY LAW. Customary law. Law derived by oral tradition from a remote antiquity. *Bell's Dict.*

CONSUETUDINES. Lat. [pl. of *consuetudo*, q. v.] In old English law. Customs. *Magna Charta*, c. 29. See *Hale de Jur. Mar.* pars 3, c. 4.

CONSUETUDINES ET ASSISA FORESTÆ. L. Lat. The customs and Assises of the Forest. The title of a statute of uncertain date, commented on by Mr. Barrington. *Obs. Stat.* 217.

CONSUETUDINES FEUDORUM. L. Lat. (The customs or customary laws of fiefs.) A title sometimes given to the

Feudorum Libri, (Books of Fiefs,) usually annexed to the *Corpus Juris Civilis*. 3 *Kent's Com.* 496.

CONSUETUDINIBUS ET SERVI-
TIIS. See *De consuetudinibus et servitiis*.

CONSUETUDO. Lat. In the civil law. Custom; long established usage or practice. *Inveterata consuetudo pro lege non immerito custoditur*; inveterate custom is not undeservedly observed as law. *Dig.* 1. 3. 32. 1. See *Taylor's Civ. Law*, 241—246.

In feudal law. Custom. Called *consuetudo feudi*, (the custom of the fief); *usus*, (usage) and *mores*, (habits, practices). Recognized as a principal source of law in the Books of Fiefs. *Lib.* 2, tit. 1.

CONSUETUDO. Lat. In old English law. A custom or usage; a customary law; a law originating from usage; a law not written. *Bract.* fol. 1, 2. Lord Coke enumerates the following as different significations of this word:

The common law, (*consuetudo Angliæ*). 2 *Inst.* 58.

Statute law. *Id. ibid.*

A particular custom, as gavelkind, borough English and the like. *Id. ibid.*

A rent or service due by tenure. *Id. ibid.*

A custom, tribute, imposition, toll, tax or charge. *Id. ibid.* *Co. Litt.* 58 b. See 2 *State Trials*, 1112. But the proper Latin for this is *custuma*, (q. v.)

A subsidy granted by parliament. 2 *Inst.* 58. *Consuetudo* is one of the main triangles of the laws of England. *Co. Litt.* 110 b.

Consuetudo est altera lex. Custom is another law. 4 *Co.* 21. *Consuetudo quandoque pro lege observatur, in partibus ubi fuerit more utentium approbata, et vicem legis obtinet*. Custom is sometimes observed as law, in parts where it has been habitually approved, and takes the place of law. *Bract.* fol. 2. *Consuetudo regni Angliæ est lex Angliæ*. The custom of the kingdom of England is the law of England. *Jenk. Cent.* 119.

Consuetudo est optimus interpres legum. Custom is the best interpreter of laws. 2 *Inst.* 18. The maxim is obviously derived from that of the civil law, the order of the words only being changed: *Optima est legum interpres consuetudo*, (q. v.) *Dig.* 1. 3. 37.

Consuetudo loci est observanda. The custom of a place is to be observed. *Litt.* sect. 169. 4 *Co.* 28 b. 10 *Id.* 140. *Broom's Max.* 416, [713]. A custom

which has long prevailed at a particular place, obtains the force of law. *Id. ibid.*

Consuetudo debet esse certa, nam incerta pro nullis habentur. A custom ought to be certain, for uncertain things are held as nothing. *Davies' R.* 33.

Consuetudo tollit [vincit] [privat] communem legem. Custom takes away [overcomes] [supersedes] the common law. By the custom of gavelkind in England, a widow is entitled to a moiety of her husband's estate so long as she continues chaste and unmarried; and this custom she cannot waive, and resort to her third part at common law. 1 *Roper on Husb. & Wife*, 351. *Co. Litt.* 33 b.

Consuetudo ex certa causa rationabili unitata privat communem legem. A custom, grounded on a certain and reasonable cause, supersedes the common law. *Litt.* sect. 169. *Co. Litt.* 113. *Broom's Max.* 417, [714].

Consuetudo præscripta et legitima vincit legem. A prescriptive and lawful custom overcomes the law. *Co. Litt.* 113. 4 *Co.* 21.

Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called a usurpation than a custom. *Co. Litt.* 113.

Consuetudo, licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati. A custom, though it be of great authority, should never prejudice manifest truth. 4 *Co.* 18.

Consuetudo semel reprobata non potest amplius induci. A custom once disallowed cannot be again brought forward, [or relied on]. *Dav.* 33.

Consuetudo neque injuria eriri neque tolli potest. A custom can neither arise [be established] nor be abolished contrary to law. *Lofft's R.* Appendix, 340.

Consuetudo volentes ducit, lex nolentes trahit. Custom leads the willing, law compels [drags] the unwilling. *Jenk. Cent.* 274.

CONSUETUDO ANGLICANA. L. Lat. The custom of England; the ancient common law, as distinguished from *lex*, the Roman or civil law. *Convenit lex cum consuetudine Anglicana*; the Roman law agrees with the custom of England. *Bract.* fol. 30 b.

CONSUETUDO CURIÆ. L. Lat. The custom or practice of a court. *Hardr.* 141.

CONSUETUDO MERCATORUM. Lat. The custom of merchants, the same with *lex mercatoria*, (q. v.) the law merchant. *Nisi sit aliter ex consuetudine mercatorum, quorum consuetudo est secundum legem mercatoriam*; unless it be otherwise by the custom of merchants, whose custom is according to the law merchant. *Fleta*, lib. 2, c. 58, § 5. See *Id.* c. 63, § 12. Holt, C. J. 1 *Show.* 5, case 8.

CONSUL. The name of a chief magistrate among the Romans, two of whom were annually created, and who, during the republic, exercised supreme authority. So called à *consulendo*, from their custom of consulting the senate. The office continued to exist under the emperors, but with only a shadow of power. See *Nov.* 105. *Nov. Const. Imp. Leonis*, 94.

CONSUL. Lat. [from *consulere*, to consult.] In old English law. An ancient title of an earl. *Comites—qui etiam dici possunt consules, à consulendo, reges enim tales sibi associant ad consulendum.* Earls—who may also be called *consuls*, from *consulendo*, for kings associate such persons with them for the purposes of consultation. *Bract.* fol. 5 b. 1 *Bl. Com.* 227.

* * The word *consul* was used by the authors of the middle ages for *comes*, (count, or earl,) and the derivative word *consulatus* for *comitatus*; (the office or district of a *comes*; a county). *Spelman.* It is mentioned in the laws of Edward the Confessor, (c. 12,) that what was then called *comitatus* was, among the Britons in the time of the Romans, called *consulatus*, and that those who were then called *vice comites*, were at the same early period called *vice consules*; their office being to supply the place of the *consul* in his absence. Mr. Hargrave is disposed to doubt this. *Harg. Ch. Litt.* lib. 3, Note 20. The use of the term, however, as applied to the highest nobility in England, seems beyond question. Bracton mentions it as an appropriate (if not an ordinary) title in his day, and dwells upon its meaning as peculiarly expressive. *Bract. ub. sup.*

CONSUL. In commercial and international law. A public agent, appointed by a government to reside in a foreign country, (and usually in sea-ports,) to watch over its own commercial rights and privileges, and the commercial interests of its citizens or subjects.* 1 *Ken's Com.* 41. A consul is not such a public minister as to be entitled to the privileges appertaining to that

character, nor is he under the special protection of the law of nations. *Id.* 44. 1 *Chitty's Com. Law*, 48, 49, et seq. *Wharton's Intern. Law*, 293. See *United States Digest*, Consul.

Consuls are an institution of comparatively modern date. It was observed by Lord Ellenborough, in 3 *M. & S.* 292, 293, that the word "consul" is neither in Grotius nor Molloy. It is conspicuously used, however, in the Ordonnance of the Marine of Louis XIV. liv. 1, tit. 9.

CONSULTA. L. Lat. [L. Fr. *conseilla*.] In old English law. Provided for. Applied to a church that was full. *Cowell.*

CONSULTATION. In English practice. A writ, in the nature of a *procedendo*, whereby a cause, being removed by prohibition out of the ecclesiastical court to the king's court, [i. e. to one of the superior courts of law,] is returned thither again to be there determined. *Termes de la Ley.* 3 *Bl. Com.* 114. 1 *Wooddes. Lect.* 93. 2 *Tidd's Pr.* 948. A similar writ has been used on prohibition in some courts in the United States. 2 *Burr. Pr.* 184. See *Prohibition, Procedendo.*

* * This writ is said by Blackstone to be so called because, upon deliberation and consultation had upon the matter removed by the prohibition, the judges find it to be ill founded, and therefore, by this writ, they return the cause to its original jurisdiction, to be there determined in the inferior court. 3 *Bl. Com.* 114. A more satisfactory explanation, however, of the origin of this writ, may be derived from a reference to the ancient practice as laid down by Bracton. Anciently, where a prohibition was issued to a spiritual court, if the judges to whom it was directed thought it well founded, they would decree a *superedeas* of the proceeding. If they were in doubt whether to proceed in the cause or not, they usually consulted the king's justices, (*solent iudices aliquando iusticiarios consulere utrum procedere possent*) by what were termed *litteras consultationis*, to which the justices replied by writs of various forms, according to the case. *Bract.* 405 b, 406. 1 *Reeves' Hist. Eng. Law*, 456. Bracton gives several of these forms, which are rather in the nature of opinions than compulsory processes, and belong probably to a much earlier period than those given in the Register, (fol. 44—58). It is not difficult to see how these obtained the name of writs of consultation,

or upon consultation; the consultation itself being, as is clearly shown, not among the justices of the superior court, but between the judges of the two courts, in the nature of a conference. The term *consultation* itself is taken from the Roman law. *Cod.* 7. 62.

CONSULTO. Lat. In the civil law. Designedly; intentionally. *Dig.* 28. 41.

CONSUMMATE. Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seized of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 *Bl. Com.* 126, 128. *Co. Litt.* 30 a.

CONT. An abbreviation of *contra*. *Rep. in Ch. passim.*

CONTE. Fr. [L. Lat. *narratio*.] In old pleading. A narrative or statement, in pleading. In the Norman law, it was used to signify any allegation of fact in a cause. *Steph. Pl. Appendix*, Note (56). Hence the word *count*, (q. v.)

CONTE. L. Fr. [L. Lat. *comes*.] In old English law. Earl. *Humfrey de Bohun*, conte de Hereford. *Roger Bygod*, conte de Norff. *Stat.* 25 *Edw.* I. m. 38. *Prelate*, contes et barouns. *Artic. sup. Chart.* Conte Mareschall. *Mem. in Scacc.* 25 *Edw.* I.

CONTE. L. Fr. [L. Lat. *comitatus*.] In old English law. A county. *LL. Gul. Cong.* 1. 42.

A, or the county court. *Id. ibid.* *En plein conte*; in full county court. *Art. sup. Chart.*

An account. *Kelham.*

CONTEK. L. Fr. A contest, dispute, disturbance, opposition. *Britt.* c. 42. *Kelham.* *Conteckours*; brawlers; disturbers of the peace. *Britt.* c. 29.

CONTEMPLATION. [Lat. *contemplatio*.] A having in view; the act of looking at or towards a thing with attention; deliberate consideration; consideration of an act or course of conduct, with the intention of doing or adopting it.

CONTEMPLATION OF BANKRUPTCY. Contemplation of an act of bankruptcy, or of an application by the debtor to be decreed a bankrupt. *Curtis*, J. 13 *Howard's R.* 151, 167. It has, however, been said, that by "contemplation of bankruptcy" the law does not mean a contemplation of applying for the benefit of

the bankrupt law, or of proceedings in a court of bankruptcy; but a contemplation of the breaking up of one's business, or an inability to continue it. *Randall, J. Crabbe's R.* 529, 532.

CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the time when, and the circumstances under which the subject matter to be construed, as a statute or custom, originated.

Contemporanea expositio est optima et fortissima in lege. Contemporaneous exposition is the best and strongest in the law. 2 *Inst.* 11. A statute is best explained by following the construction put upon it by judges who lived at the time it was made, or soon after.* *Id. ibid.* and 136, 181. 10 *Co.* 70. 1 *Wooddes. Lect.* xxxi. xxxii. *Broom's Max.* 300, [532]. A contemporaneous exposition even of the constitution of the United States, practised and acquiesced in for a period of years, fixes the construction. 1 *Cranck's R.* 209. 1 *Kent's Com.* 464, 465. Construction may also be by acts as well as formal exposition, and hence the rule that ancient instruments may be construed by ancient usage, as constituting the best evidence of the intention of the parties. Lord Hardwicke, C. 2 *Atk.* 577. *Broom's Max.* 300, [532]. 2 *Smith's Lead. Cas.* 295. "*Contemporanea interpretatio*, whether it be of statute or scripture, or author whatsoever, is of greatest credit." *Bacon's Arg.* Jurisdiction of Marches, *Works*, iv. 269.

CONTEMPT. [Lat. *contemptus*.] Disobedience or disregard of authority.* A disobedience to the rules, orders or process of a court of justice, or a disturbance or interruption of its proceedings.* 4 *Bl. Com.* 285. Contempts are either direct, which openly insult or resist the powers of the court, or the persons of the judges who preside there; or consequential, which (without such gross insolence or direct opposition,) plainly tend to create an universal disregard of their authority. *Id.* 283, 284. Or they may be divided into such as are committed in the face of the court, (*in facie curiæ*), which are punishable by commitment and fine, and such as are committed out of court, which are punishable by attachment. 1 *Tidd's Pract.* 479, 480. 4 *Bl. Com.* 285, 286. 4 *Steph. Com.* 348—353. See 1 *Kent's Com.* 300, note. 1 *Hill's (N. Y.) Rep.* 154. *United States Digest*, Contempt. A party disobeying a

rule or process of court is said to be in *contempt*. 4 *Steph. Com.* 19. See *Attachment*, *Commitment*.

Disregard or disobedience of the rules of a legislative body.

CONTEMPTIBILITER. L. Lat. Contemptuously. *Fleta*, lib. 2, c. 60, § 35.

CONTEMPTUS. Lat. In old English law. Contempt; contempta. *Fleta*, lib. 2, c. 60, § 35.

CONTENEMENT. See *Contentementum*.

CONTENEMENTUM. L. Lat. [from *con*, together, and *tenementum*, a tenement, or thing holden; L. Fr. *contenance*.] In old English law. A contentement; that which is held together with another thing; that which is connected with a tenement or thing holden; countenance; appearance; credit or reputation.* See *infra*.

The precise meaning of this word is uncertain. It occurs in the following passage of *Magna Charta*: *Liber homo non amercietur pro parvo delicto, nisi secundum modum illius delicti: et pro magno delicto secundum magnitudinem delicti, salvo sibi contenemento suo; et mercator eodem modo, salva mercandisa; et villanus—salvo wainagio suo.* A freeman shall not be amerced for a small offence, but after the manner of the offence; and for a great offence, according to the magnitude of the offence, saving to him his *contentement*; and a merchant in the same way, saving his merchandise; and a villein—saving his wainage. *Magna Charta*, c. 14. *Spelman. Termes de la Ley. Covell.* See *Liber homo*. The word occurs in the same form in *Glanville* and *Bracton*. *Glanv.* lib. 9, c. 8. *Bract.* fol. 116 b. *Fleta* calls it *continentia*. *Fleta*, lib. 1, c. 48, § 2. The French form is *contenance*, though *contentement* is used in the French statute of Westminster 1, c. 6.

The author of the *Termes de la Ley* defines *contentement* to be "the freehold land that lies to [that is, adjoining] the tenement or dwelling-house that is in one's own occupation." Sir Henry *Spelman* translates *contentementum* by the word *countenance*, on the analogy of the similarly formed word *manutenementum*, the Latin for *maintenance*; and, without any particular reference to land, defines it to be "the reputation or standing which a man has in the state," or "the outward appearance of his condition," (*astimatio et conditionis forma, quæ quis in republica subistit*). Lord Coke defines it to be "a

man's countenance, [credit or reputation,] which he has together with [*con*] and by reason of his freehold," [*tenementum*]. 2 *Inst.* 28. *Blount*. And see *Barrington. Obs. Stat.* 12.

The most reasonable opinion to be deduced from the whole language of the provision of *Magna Charta* above quoted, seems to be, that this *contentementum*, mentioned as the characteristic property of the freeman, was a certain quantity of land exempted from amercement, on the ground of being necessary for its owner's support, like the wares of a merchant, or the wains of an agricultural bondman; land being in those days as essential to the creditable subsistence or countenance in society of the freeholder, (*liber homo*), as the other kinds of property named were to the subsistence of their respective owners. See 4 *Bl. Com.* 379. As to the particular description and quantity of land so exempted, the definition first above given seems to convey the most satisfactory interpretation, viz. that it was limited to the freehold land adjoining to, and necessary to the reputable enjoyment of the party's dwelling.

CONTENTIOUS JURISDICTION. In English ecclesiastical law. That branch of the jurisdiction of the ecclesiastical courts, which is exercised upon matters in controversy between parties, as brought before the court by action, or other judicial process; in contradistinction to voluntary jurisdiction, which is exercised upon matters not opposed, or controverted, such as the granting of probate of wills, letters of administration, and the like.* 3 *Bl. Com.* 66. See *Hale's Anal.* sect. vi. This term is derived from the civil law. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 17, § 1323.

"CONTENTS UNKNOWN." Words sometimes annexed to a bill of lading of goods in cases. Their meaning is that the master only means to acknowledge the shipment in good order, of the cases, as to their external condition. 12 *Howard's R.* 273.

CONTENTUS. L. Lat. [from *continere*, to contain.] Contained. A barbarous participle of frequent occurrence in the old books. *Ad diem in brevi contentum*; at the day contained in the writ. *Fleta*, lib. 2, c. 64, § 11. *Contentarum in carta nostra. Mag. Cart.* 9 Hen. III. c. 37. *In hac carta contentæ. Id.*

CONTER. L. Fr. Against. 1 *And.* 49.

CONTERFET. L. Fr. Counterfeit. *Clypt ou conterfet money. Mem. in Scacc. T. 20 Edw. I.*

CONTERMINOUS. [from *con*, together, and *terminus*, a boundary.] Adjacent or adjoining; having common boundaries. *Hale's Hist. Com. Law, 98.*

CONTERROLLE. L. Fr. In old English law. A counter-roll. *Stat. Westm. L. c. 10. See Counter-roll.*

To CONTEST. [Lat. *contestari*, to call to witness.] To defend a suit or other judicial proceeding; to dispute, oppose or resist a claim by course of law; to litigate, on the part of a defendant.*

This word has entirely lost the original sense of its Latin form *contestari*, which, in the old Roman law, was applied primarily to the proceedings on the part of the plaintiff. When the plaintiff opened the proceedings before the prætor, by stating his cause of action, it was the custom for him to call upon the by-standers to act as witnesses, which act was called *antestari*, or *contestari*. *Festus de Verb. Signif. voc. Contestari.* Therefore it was always said of the plaintiff, *actor liem contestatur*, (the plaintiff contests the suit). *Dig. 46. 2. 28. See Contestatio litis.*

CONTESTATIO LITIS. Lat. In the civil law. Contestation of suit. A narrative of the controversy made by both the parties to a suit before the prætor, including the plaintiff's statement of his claim, and the defendant's answer thereto. So called, because originally conducted before witnesses, (*testes*). *Hallifax, Anal. b. 3, ch. 9, num. 20. Nov. 96, c. 1. 1 Mac-keld. Civ. Law, 205, § 203.* This application of the term is retained in the canon law. *Id. ibid. Kaufmann's note.*

The legal quality which a suit assumed through the plaintiff's statement of his case, and the defendant's answer thereto. *Id. ibid.*

In early English law. The process of coming to an issue in pleading; the attainment of an issue, or the development of the point in controversy, by the alternate and contradictory statements of the respective parties; the issue itself, so attained or produced.* *Steph. Pl. Appendix, Note (39). Fortescue de LL. Angl. c. 20. Crabb's Hist. Eng. Law, 216.* More commonly termed *litis contestatio*, (q. v.) *Fleta, lib. 6, c. 15, § 3.*

The meaning of this term in the civil law seems to have been misapprehended

by Blackstone, who makes it synonymous with *defence* in common law pleading. 3 *Bl. Com. 296. Steph. Pl. Appendix, Note (39).* In the practice of the ecclesiastical courts, however, (which he may have had in view,) contestation of suit has this signification of defence. *Hallifax, Anal. b. 3, ch. 11, num. 9.* And *litis contestatio* has the same meaning in Germany. 1 *Mack. Civ. Law, 205, Kaufmann's note.*

Contestatio litis egot terminos contradic-tiones. An issue requires terms of contradiction. *Jenk. Cent. 117.* To constitute an issue, there must be an affirmative on one side and a negative on the other. *See Issue.* A misapprehension of the meaning of *contestatio litis*, in this maxim, has led to some absurd translations. *See Branch's Princ. Wharton's Lex.*

CONTINENCIA. Span. In Spanish law. Contineny or unity of the proceedings in a cause. *White's New Recop. b. 3, tit. 6, ch. 1.*

CONTINENS. [from *continere*, to hold together.] In the civil law. Continued; continuous; holding together; joined together. Buildings in the suburbs of Rome were said to be *continentia*, and in *continentibus*. *Dig. 50. 16. 2. pr. Id. 50. 16. 139. Id. 50. 16. 173. 1. See Abesse.*

CONTINENTIA. L. Lat. [from *continere*, to hold together.] In old English practice. Continuance or connexion. Applied to the proceedings in a cause. *Bract. fol. 362 b.*

Countenance. *Fleta, lib. 1, c. 48, § 2. See Contenementum.*

CONTINGENCY. [from Lat. *contingere*, to happen.] An event that may or may not happen; a possibility.

CONTINGENCY WITH A DOUBLE ASPECT. A contingent remainder, (q. v.) limited in substitution for another contingent remainder in fee simple. As if land be given to A. for life, and, if he have a son, then to that son in fee; and if he have no son, then to B. in fee. 1 *Steph. Com. 302.*

CONTINGENT ESTATE. An estate which depends, for its effect, upon an event which may or may not happen; as an estate limited to a person not *in esse*, or not yet born. 2 *Crabb's Real Prop. 4, § 946.*

CONTINGENT LEGACY. A legacy given to a person at a future uncertain time, that may or may not arrive; as "at his age of twenty-one," or "if," or "when he attains twenty-one." 2 *Bl. Com. 513. 2*

Steph. Com. 259. *Ward on Legacies*, 172.

CONTINGENT REMAINDER. A remainder limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event, (and by which no present interest passes,) so that the particular estate may chance to be determined, and the remainder never take effect.* 2

Bl. Com. 169.—A remainder limited either to an uncertain person, or upon an uncertain event; that is, to a person not *in esse*, or not ascertained, or upon an event which may not happen at all, or not happen until after the particular estate is determined. 1 *Steph. Com.* 301.—A remainder limited so as to depend on an event or condition which may never happen, or be performed; or which may not happen or be performed till after the determination of the preceding estate. *Fearne on Contingent Remainders*, 3. See 2 *Crabb's Real Prop.* 965, § 2330. 4 *Ken's Com.* 206, 208, note. 1 *Hilliard's Real Prop.* 496. See *Remainder*.

CONTINGENT USE. A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B. after a marriage shall be had between them. 2 *Bl. Com.* 334. Otherwise called a *future use*, and sometimes, though inaccurately, a springing use. *Gilbert on Uses*, (by Sugden,) cited 2 *Chitty's Bl. Com.* 334, note. These are properly uses to take effect as remainders. *Id. ibid.* See 1 *Co.* 120; *Chudleigh's case*. 1 *Anderson*, 309. 4 *Ken's Com.* 237—247. 1 *Hilliard's Real Prop.* 523. See *Scintilla juris*.

CONTINGERE. Lat. In old English law. To touch; to be connected with, or akin to. *Qui esse non contingunt*; who are not of kin to each other. *Bract.* fol. 28 b.

CONTINUAL CLAIM. [L. Lat. *continuum clameum*.] In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called *continual*, because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and when made in due form, had the same effect with, and in all respects amounted to a legal entry. *Litt.* sect. 419—423. *Co. Litt.* 250 a. 3 *Bl. Com.* 175. Lord Coke

calls it an entry in law, and says that it is as strong as an entry in deed. *Co. Litt.* 256 b. It has been lately abolished in England, by stat. 3 & 4 Will. IV. c. 37, § 11. 1 *Steph. Com.* 472.

CONTINUANCE. [L. Lat. *continuatio*.] In ancient practice. The adjournment of the proceedings in a cause from one day or one term to another.

The entry of such adjournment on the record, expressing the ground of the adjournment, and appointing the parties to re-appear at the given day. *Steph. Pl.* 31, 81, (Am. ed. 1824).

In modern practice. The postponement of the proceedings in a cause, as putting off a trial, &c. *United States Digest*, Continuance and Adjournment.

An entry made upon the record of a cause, for the purpose of formally continuing it in court; or rather, for the purpose of properly connecting the proceedings on the record.* Before declaration, the continuance is by *dies datus*, (q. v.); after declaration, and before issue joined, the proceedings are continued by *imparlance*, (q. v.); after issue joined, and before verdict, by *vicecomes non misit breve* (q. v.); and after verdict or demurrer, by *curia advisari vult*, (q. v.) *Hardr.* 365, 366. 1 *Tidd's Pr.* 678. But some of these continuances are now disused, and in England they are entirely abolished. *Rules Hil. T.* 4 Will. IV.

* * * The adjournments under the old practice were always *actually* made in each cause, by express direction of the court; and the entries of them upon record were made *in court at the time* of their being so directed, such entries being the only evidence the court would admit, of the manner in which the cause was disposed of. In order to estimate the peculiar propriety of these entries, we must refer to the two fundamental principles of the ancient practice; the first of which was, that the action must be under the *immediate supervision* of the court, throughout its *whole course*, from beginning to end, and that no act could be done by the parties except when in court. Under this rule, the proceedings could not be suspended, and the parties dismissed even temporarily, without leave, nor could the parties come again into court, and the proceedings be resumed, without similar leave, by having a *day* previously *given* to them for that purpose. The second principle was, that the record must *follow the*

action, keeping pace with every step of it, and accounting for every thing that was done during its progress, so as to show the proper reason for it, viz. the direction of the court. A compliance with these two principles was facilitated by the circumstances of the parties personally appearing and pleading in open court, and of the record being a contemporaneous minute of the proceedings. See *Record*.

CONTINUANDO. L. Lat. (By continuing.) In old pleading. A word formerly used in a special declaration of trespass, where the plaintiff would recover damages for several trespasses in the same action. *Termes de la Ley*. Thus, in trespasses of a permanent nature, where the injury was continually renewed, (as by spoiling or consuming the herbage with the defendant's cattle,) the declaration might allege the injury to have been committed by continuation from one given day to another, (which was called laying the action with a *continuando*,) instead of compelling the plaintiff to bring separate actions for every day's separate offence. 3 *Bl. Com.* 212. 1 *Ld. Raym.* 240, 824. The form of words was this: *continuando transgressionem predictam, &c. à predicto die, &c. usque talem diem*; (by continuing the aforesaid trespass, &c. from the day aforesaid, &c. to such a day;) and so including the last trespass. *Termes de la Ley*. It has now, however, become obsolete. 3 *Chitt. Bl. Com.* 212, note.

CONTRA. Lat. [L. Fr. *contre*, *conter*.] Against; in opposition to; contrary to; on the opposite side; the contrary. A term constantly used in the reports, to denote the opposition of counsel in a cause; the disallowance by the court of a point in argument, (*curia contra*); and the opposition of cases cited as establishing opposite doctrines. *E contra*, (q. v.) is sometimes used in the same sense.

In some of the older books, *contra* is used instead of *versus*, in the titles of causes, like the old Scotch "*contrair*." See *Reports in Chanc.* per tot.

CONTRA BONOS MORES. Lat. Against good morals. *Hob.* 167. This phrase occurs in the Roman law. *Cod.* 8. 39. 4.

CONTRA FORMAM FEOFFAMENTI. L. Lat. (Contrary to the form of the feoffment.) In old English law. A writ that formerly lay for a tenant, or his heir, enfeoffed of certain lands or tenements by

charter of feoffment from a lord to do certain services, and especially suits to his court, who was afterwards distrained for more services than were mentioned in the charter. *Cowell. Termes de la Ley. Reg. Orig.* 176.

CONTRA FORMAM STATUTI. L. Lat. (Against the form of the statute.) In old pleading. A phrase used at the conclusion of indictments laid on an offence created by statute, and of declarations on penal statutes, and held to be essential. 1 *Ld. Raym.* 150, 342, 343. 4 *Steph. Com.* 377. *Contra formam statuti in tali casu editi et provisi*; against the form of the statute in such case made and provided. *Towns. Pl.* 164. The use of the corresponding English phrase is still generally held to be essential, though the strictness of the rule on this point has been sometimes relaxed. 1 *Chitt. Pl.* 372, 373. 4 *Steph. Com. ub. sup.* 1 *Penn. St. R.* 154. 1 *Gilman's (Ill.) R.* 333, 440. 10 *Richardson's Law R.* 152. *Lewis' U. S. Crim. Law*, 644—686.

CONTRA INHIBITIONEM NOVI OPERIS. Lat. Contrary to the prohibition of a new work; contrary to the law prohibiting the erection of a new building. A phrase supposed to be derived from the title *De novi operis nuntiatione* in the civil law, (*Dig.* 39. 1,) and made use of by Blackstone to show, by the total misapprehension of its meaning, the gross ignorance of the terms of the civil law formerly manifested by the judges and counsel in the common law courts. 1 *Bl. Com.* 22, note (o).

CONTRA JUS BELLII. Lat. Against the law of war. *Grotius*, lib. 3, c. 11, § 15. 1 *Kent's Com.* 6.

CONTRA JUS COMMUNE. Lat. Against common right or law; contrary to the rule of the common law. *Bract.* fol. 48 b.

CONTRA LEGEM. Lat. Against the law. *Contra legem facit, qui id facit quod lex prohibet*; he acts against the law, who does that which the law forbids. *Dig.* 1. 3. 29.

CONTRA LEGEM TERRÆ. Lat. Against the law of the land. *Mag. Cart. Johan.* c. 55.

Contra negantem principia non est disputandum. There is no disputing against one who denies first principles. *Co. Litt.* 343.

Contra non valentem agere nulla currit præscriptio. Against one who is unable to

act, no prescription runs. Statutes of limitations do not run against parties under disability. *Broom's Max.* 398, 399, [700]. See 6 *Texas R.* 223.

CONTRA OMNES GENTES. Lat. Against all people. Formal words in old covenants of warranty. *Fleta*, lib. 3, c. 14, § 11.

CONTRA PACEM. Lat. Against the peace. *Contra pacem domini regis*; against the peace of the lord the king. Phrases used in indictments, and in civil actions of trespass, to signify that the acts complained of are committed against the peace of the king, or public peace. 1 *Chitt. Pl.* 388. "Against the peace of the people," or "commonwealth," is the phrase used in American law. *Lewis' U. S. Crim. Law*, 644—686.

By the ancient law, in all peculiar jurisdictions, offences were said to be done *against his peace* in whose court they were tried; in a court leet, *contra pacem domini* (against the peace of the lord); in the court of a corporation, *contra pacem ballivorum* (against the peace of the bailiffs); in the sheriff's court or tourn, *contra pacem vice comitis*, (against the peace of the sheriff). 1 *Bl. Com.* 117. *Bract.* fol. 145 b. *Fleta*, lib. 2, c. 63, § 1. See *Paz, Peace*.

CONTRA TABULAS. Lat. In the civil law. Against the will (testament). *Dig.* 37. 4.

CONTRA VADIUM ET PLEGIUM. L. Lat. In old English law. Against gage and pledge. *Bract.* fol. 15 b. *Fleta*, lib. 1, c. 42, § 2.

Contra veritatem lex nunquam aliquid permittit. The law never suffers any thing contrary to truth. 2 *Inst.* 252.

CONTRABAND. [from Lat. *contra*, against, and L. Lat. *bannum*, Ital. *bando*, an edict or proclamation; Fr. *contrebande*.] Against law or treaty; prohibited.* Goods exported from, or imported into a country against its laws. *Brande*.—Articles, the importation or exportation of which is prohibited by law. *P. Cyclopædia*. See *Contrebande*.

CONTRABAND OF WAR. In international law. Goods which neutrals are prohibited from carrying during war to the belligerent parties; or which a belligerent has, by the law of nations, the right of preventing a neutral from furnishing to an enemy; and which, while *in transitu*, are liable to seizure and confiscation; such as arms and warlike stores, or what are termed

munitions of war. 1 *Kent's Com.* 135, *et seq.* *Brande*. Provisions and other articles are sometimes contraband and sometimes not, according to circumstances. 1 *Kent's Com.* 138—142. It is the *usus bellici* [warlike purposes] which determine an article to be contraband. *Id.* 141. See *Wheaton's Intern. Law*, 509—529.

CONTRACT. [Lat. *contractus*, from *contrahere*, to draw together.] An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 *Bl. Com.* 442. Otherwise variously defined as follows:

An agreement of two or more persons, upon sufficient consideration, to do or not to do a particular thing. 2 *Kent's Com.* 449.

An agreement in which a party undertakes to do, or not to do a particular thing. *Marshall, C. J.* 4 *Wheaton's R.* 122, 197. A compact between two or more parties. *Id.* 6 *Cranch's R.* 87, 136.

An agreement between two or more persons, to do or not to do a particular thing. *Taney, C. J.* 11 *Peters' R.* 420, 572.

A covenant or agreement between two parties, with a lawful consideration or cause. *West's Symbol.* part 1, lib. 1, § 10. *Cowell. Blount*.

A deliberate engagement between competent parties, upon a legal consideration, to do, or to abstain from doing some act. *Story on Contracts*, § 1.

An agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises. *Encyclop. Amer. Webster*.

A mutual promise, upon lawful consideration or cause, which binds the parties to a performance. *Webster*.

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation. *Id.* This last is a distinct signification of the term. See 2 *Hill's (N. Y.) R.* 551.

An act of the legislature may be a contract. A grant of lands, with a perpetual exemption from state taxes, is a contract, "the obligation" of which cannot be "impaired" by a subsequent act of the legislature levying a state tax on such lands. 5 *Ohio St. R.* 361. So, a charter is a contract, within the meaning of the constitution of the United States, between the state granting the charter and the corpora-

tion created by it, the obligation of which the state legislature cannot impair. 27 *Mississippi R.* 517.

* * Mr. Stephen objects to the definition of Blackstone (*supra*.) 1, that the word *agreement* itself requires definition as much as contract; 2, that the existence of a *consideration*, though essential to the validity of a parol contract, forms properly no part of the idea; and 3, that the definition takes no sufficient notice of the *mutuality* which properly distinguishes a contract from a promise. 2 *Steph. Com.* 109, note. His own words of definition are: "A contract or agreement is where a promise is made on one side, and assented to on the other; or where two or more persons enter into engagement with each other, by a promise on either side." *Id.* 108, 109. As to the word *agreement*, it may be observed that some word of the kind seems essential to constitute the basis of any definition of contract that can be attempted. *Agreement* appears to be the translation of *conventio* in the civil law definition of the term, but falls short of the original (a coming together) in expressiveness, besides being liable to the objection of being a synonyme (or nearly so,) of the word which it is selected to define. Its use, however, has the support of the highest authority in ancient and modern law.—As to the idea of a *consideration*, it will be seen that it has been admitted into the best definitions of contract, both ancient and modern, (except that of Chief Justice Marshall,) that have been framed; and its materiality to complete the idea of a contract is forcibly shown by the circumstance, that in that class of contracts (those by specialty or under seal) in which no consideration in fact is required, one is *always presumed* by law, the form of the instrument being held to *import* a consideration. See 2 *Kent's Com.* 450, note.—The third objection of Mr. Stephen to the definition of Blackstone, that it takes no sufficient notice of the *mutuality* of a contract, has apparently more weight; although, from Blackstone's own analysis of his definition, it would seem that he intended the idea of mutuality to be conveyed by, and implied in the word *agreement* itself, which, in another passage, he describes as "a mutual bargain or convention." 2 *Bl. Com.* 442. On the whole, notwithstanding these objections, the correctness of the definition of Blackstone remains essentially unimpeached, and it certainly enjoys the prefer-

ence of the best authority. 2 *Kent's Com.* 499, 450. *Story on Contracts, ubi supra.*

The modern use of the word *contract*, as a generic term for all sorts of obligations, (including those created by record and by specialty,) though established on high authority, seems to be an undue extension of the proper meaning of the term, and has thrown much difficulty in the way of accurate definition. *Contract* is obviously derived (through *contractus*, a term of the civil law,) from *contrahere*, to draw together; importing the same radical idea with *agreement*, but with a stronger expression of *mutuality* in the use of the particle *con*. See *Agreement*. *Mutuality*, indeed, is of its very essence; not only mutuality of *assent*, implying free and deliberate action of the parties in coming into the contract, but mutuality of *act* also,—mutuality in the things agreed to be done by the contract; each party engaging to do, or not to do certain things. There is, in Lord Coke's phrase, (though not in the etymological sense in which he used it,) act against act, (*actus contra actum*). 2 *Co.* 15. 7 *Man. & Gr.* 998, arg. and note. Thus, in the contracts of sale, bailment and for the performance of work, there are acts to be done by *both* parties; the one engaging to deliver the article or perform the work, and the other to pay the price, to use the article carefully, &c. So, in the contracts of partnership and marriage, the engagements are mutual. Engagements of this description, and no others, seem to come properly under the denomination of *contracts*. In a bond, on the other hand, there is none of this kind of mutuality; there is no act to be done by the obligee to make the instrument binding; the obligation is all upon the side of the obligor. In a judgment, there is not only no mutuality of act, but not even mutuality of assent; the obligation being fastened upon the party by the law, whether he wills it or not; *judicium redditur in invitum*. Hence, judgments have very properly been denied to be contracts, notwithstanding the doctrine of Blackstone, that a contract is, in such cases, implied. Lord Mansfield, 3 *Burr.* 1545. 1 *Cowen's R.* 316. *Story, J.* 1 *Mason's R.* 288. The impropriety of applying the term *contract* to bonds and judgments seems to be virtually admitted by Mr. Chitty, who uses *obligation* as an alternative word of description, in regard to both. *Chitty on Contracts*, 2, 4. See *Obligation*.

CONTRACT, Obligation of. See *Obligation of Contract*.

CONTRACT OF SALE. A contract by which one of the contracting parties, called the seller, enters into an obligation to the other, to cause him to have freely by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the buyer, on his part obliges himself to pay. *Pothier, Contr. of Sale, Prel. art.*

CONTRACTATIO. See *Contractatio*.

CONTRACTION. The shortening or drawing together of a word by the omission of one or more letters, and sometimes of a syllable. This was a peculiar feature of the ancient *court hand* (q. v.) in which records were written in England; and was adopted in the earliest printed law books in Latin and French, such as Bracton, The Register, Britton, the Year Books, and others. A very common kind of contraction was by the omission of the letters *m* and *n* when they followed a vowel, the omission being denoted by a horizontal mark or dash over the latter. Various other arbitrary marks over and through the letters retained were employed, which cannot be represented without types cast expressly for the purpose. The following is a list of the principal contractions, as taken from the works above mentioned:

a for *am*; as *ta* for *tam*.
a for *an*; as *ate* for *ante*.
e for *em*; as *ide* for *idem*.
e for *en*; as *metio* for *mentio*.
e for *æ*; as *hec* for *hæc*.
i for *im*; as *eni* for *enim*.
i for *in*; as *iter* for *inter*.
o for *om*; as *oni* for *omni*.
o for *omn*; as *oes* for *omnes*.
o for *on*; as *cotra* for *contra*.
u for *um*; as *du* for *dum*.
u for *un*; as *nuc* for *nunc*.
b for *bus*; as *hæredib* for *hæredibus*.
d for *dus*; as *secund* for *secundus*.
g for *gis*; as *reg* for *regis*.
i or *j* for *ius* or *jus*; as *cui* for *cujus*.
l for *lus*; as *mascul* for *masculus*.
m for *mus*; as *præcipim* for *præcipimus*.
n for *nus*; as *man* for *manus*.
n for *omin*; *dno* for *domino*.
p for *per*; as *pactis* for *peractis*.
p for *præ*; as *pdictus* for *prædictus*.
p for *pro*; as *ppter* for *propter*.
p for *pus*; as *corp* for *corpus*.
q and *qd* for *quod*.
q for *quam*; *quis* for *quamvis*.

r for *ris*; as *tutor* for *tutoris*.
r for *rev*; as *bre* for *breve*.
r for *rum*; as *alior* for *aliorum*.
r for *rat*; as *gria* for *gratia*.
t for *tis*; as *dot* for *dotis*.
t for *tus*; as *rect* for *rectus*.

The following are examples of double or more complex contractions:

ateq for *antequam*. *Bract. fol. 204 b.*
attata for *atterminata*. *Fleta, lib. 2, c. 3, § 4.*

coem for *communem*. *Reg. Orig. 11.*
coia for *communiam*. *Yearb. M. 9 H. VI. 8.*

coponit for *componitur*. *Bract. fol. 222.*
cro for *crastino*. *1 Inst. Cler. 9.*
danu for *damnum*. *Bract. fol. 221.*
dcm for *dictum*. *Mem. in Scacc. P. 20 Ed. I.*

epi, epo for *episcopi, &c.* *Bract. fol. 249.*
heo for *habeo*. *Yearb. M. 9 H. VI. 8.*
hmi for *hujusmodi*. *Bract. fol. 180.*
hoi for *homini*. *M. 9 H. VI. 8.*
huist for *habuit*. *M. 20 H. VI. 10.*
ibm for *ibidem*. *Reg. Orig. 97 b.*
moledinu for *molendinum*. *Bract. fol. 221.*
noia for *nomina*. *Id. fol. 212 b.*
nrm for *nostrum*. *Id. fol. 249.*
oia for *omnia*. *M. 9 H. VI. 8.*
oibz for *omnibus*. *Towns. Pl. 21.*
oibus fribz for *omnibus fratribus*. *M. 9 H. VI. 8.*

oim scorum for *omnium sanctorum*. *M. 19 H. VI. 15.*
ostededu for *ostendendum*. *Reg. Orig. 70.*
pat for *paratus*. *P. 18 H. VI. 9.*
pd for *prædictus*. *Reg. Orig. 10 b.*
pedete for *pendente*. *Id. 77 b.*
phibic for *prohibitionem*. *Id. 67 b.*
racoe for *ratione*. *M. 7 Ed. III. 74.*
sacraetu for *sacramentum*. *M. 9 H. VI. 13.*
scio for *scaccario*. *Mem. in Sc. H. 18 E. I.*
scdm for *secundum*. *Reg. Orig. 11, 76, 117.*

tatu for *tantum*. *Bract. fol. 206.*
uu for *unum*. *M. 9 H. VI. 8. And see 1 Inst. Cler. 3—14.*

The following are some of the principal contractions in French:

aps for *apres*. *Dyer, 31, (Fr. ed.)*
ava for *avera*.
auc for *auncestre*.
bre for *breffe*.
c for *ceo*.
chre for *chartre*. *M. 3 H. VI. 31.*
cotple for *conterple*. *M. 10 H. VI. 56.*
do for *done*.
e for *en*.

ee for *etre*.

ezon for *excepcion*. H. 2 E. II. 30.

frakteet for *frankenement*. M. 19 H. VI. 16.

getz for *gentz*.

Lodr for *Londres*.

muiets for *muniments*. M. 19 H. VI. 23.

nre for *nostre*.

p for *per*, *par*.

p'c'q' for *pur ceo que*.

pole for *parole*.

saunk for *saunk*.

s, so for *son*.

tent for *tenement*.

teps for *temps*.

time for *terme*. Dyer, 31.

vs for *vers*. And see *Britt. passim*.

Even English words were sometimes expressed in the same way:

sigle wo for *single woman*. M. 10 H. VI. 70.

CONTRACTUS. Lat. [from *contrahere*, q. v.] Contract; a contract; contracts. See *Contract*.

Contractus ex turpi causa, vel contra bonos mores, nullus est. A contract founded on a base consideration, or against good morals, is null. *Hob.* 167. This is the same in substance with the maxim of the civil law: *Pacta quæ turpem causam continent non sunt observanda*. Agreements upon a base consideration are not to be kept, or enforced. *Dig.* 2. 14. 27. 4.

Contractus legem ex conventionem accipiunt. Contracts take their law from the agreement of the parties. *Dig.* 16. 3. 1. 6.

CONTRADICERE. Lat. In old English law. To oppose; to refuse; to contradict. *Reddere contradicit*; refuses to return. *Reg. Orig.* 92 b. 4 *Mod.* 153.

CONTRAFACERE, Conterfacere. L. Lat. [L. Fr. *contrefaire*.] In old English law. To counterfeit, or imitate. 2 *Ld. Raym.* 1469. *Freem.* 429. Usually written *controfacere*, (q. v.)

To devise. 2 *Mod.* 98.

CONTRAFACTIO. L. Lat. In old English law. A counterfeiting. *Cowell. Blount.* Properly *controfactio*. See *Conterfacere, Controfactura*.

CONTRAHERE. Lat. [from *con*, together, and *trahere*, to draw.] To contract, to draw together; to engage or assume a liability to or with another.* *Qui cum alio contrahit vel est, vel esse debet, non ignarus conditionis ejus*. He who contracts with another either is, or ought to be, not ignorant of his condition. *Dig.* 50. 17. 19.

Furiosus nullum negotium contrahere potest. A madman can contract nothing, (can enter into no contract). *Id.* 50. 17. 5. *Ita contrahitur donatio*; so the gift is contracted, i. e. completed between the parties. *Bract.* fol. 16 b. *Contrahitur obligatio*; obligation is contracted. *Fleta*, lib. 2, c. 56, § 4.

CONTRALIGATIO. L. Lat. In old English law. Counter obligation. Literally, counter-binding. *Est enim obligatio quasi contraligatio*. *Fleta*, lib. 2, c. 56, § 1.

CONTRAMANDARE. L. Lat. [from *contra*, against, and *mandare*, to command.] In old English law. To command against; to make an order contrary to a former order; to countermand.* *Si dies placiti sit contramandatus*; if the day of the plea or day to plead be countermanded. *LL. Hen.* I. c. 59.

CONTRAMANDATIO. L. Lat. [from *contramandare*, q. v.] A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, [by countermanding the day fixed for him to plead, and appointing a new day]; a sort of imparlance. *Cowell*.

CONTRAPLACITUM. L. Lat. In old English law. A counter plea. *Towns. Pl.* 61. See *Counterplea*.

CONTRAPOSITIO. L. Lat. In old English law. A plea or answer. *Blount.* A counter-position.

CONTRAROTULATOR. L. Lat. In old English law. A controller. *Reg. Orig.* 192. *Contrarotulator customarum*; controller of the customs. *Id. ibid.* *Contrarotulator hospitii domini regis*; controller of the king's household. *Towns. Pl.* 209. *Fleta*, lib. 2, c. 14, § 2. *Contrarotulator pipe*; controller of the pipe. *Cowell.* See *Controller*.

CONTRAROTULUS. L. Lat. In old English law. A counter roll. *Fleta*, lib. 1, c. 18, § 1. *Id.* lib. 2, c. 27, § 3.

CONTRATALLIA. L. Lat. In old English law. A counter-tally. A term used in the exchequer. *Mem. in Scacc. M.* 26 Edw. I.

CONTRATENERE. L. Lat. To hold against; to withhold. *Whishaw*.

CONTRAVERIRE. Lat. In old English law. To contravene; to go against; to violate. *Bond fide observare, et in nullo contravenire*; to observe in good faith, and in nought to contravene. Sometimes the

component parts of this word are separated by an intervening word, as *contra prædicta venire*. *Cart. Confirm.* 49 Hen. III.

CONTRAVENTION. In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court. 1 *Kames' Equity*, Pref.

The action founded on the breach of law burrows. *Ersk. Inst.* b. 4, tit. 1, § 16.

CONTREBANDE. Fr. [from *contre*, against, and *bande*, a proclamation.] In French marine law. Contraband. *Ord. Mar.* liv. 1, tit. 5, art. 5. The contravention of a *bande*, *ban*, or public proclamation. *Emerig. Tr. des Ass.* ch. 12, sec. 51.

CONTRACTARE. Lat. In the civil law. To handle; to take hold of; to meddle with.

In old English law. To treat. *Vel malè contractet*; or shall ill treat. *Fleta*, lib. 1, c. 17, § 4.

CONTRACTATIO. Lat. A handling or meddling with; the improper or unauthorized use of a thing. This term is employed in the civil law in the definition of theft, (*furtum*). *Inst.* 4. 1. 1, 6, 8. *Dig.* 47. 2. 52. 19. *Tayl. Civ. Law*, 467. See *Furtum*. Bracton has borrowed it from this source, but in many copies of that author it is misprinted *contractatio*, (fol. 150 b); which has sometimes occasioned difficulty in interpreting the passage in which it occurs. Dunlap, arg. 5 *Mason's R.* 540. The misprint is copied in *Fleta*, lib. 1, c. 38.

CONTREFAIRE. L. Fr. To imitate; to counterfeit. *Kelham*.

CONTRE-MAITRE. Fr. In French marine law. The chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the counter-master. *Ord. Mar.* liv. 2, tit. 5. Otherwise called *nócher*. *Id.*

CONTREMAUNT, *Contremount.* L. Fr. Ascending; uppermost. *Kelham*.

CONTRESTEANT. L. Fr. Withstanding; opposing. *Nient contrestéant la garantie*; notwithstanding the warranty. *Yearb.* H. 6 Edw. III. 16.

CONTRÉVAL. L. Fr. Downwards. *Kelham*.

CONTRIBUTIO. Lat. [from *contribuere*, to contribute, to make up jointly.] In the civil law. Contribution. *Lege Rhodia cavetur, ut, si levandæ navis gratiâ jactus mercium factus est, omnium contributione sarcitur quod pro omnibus datum est*; by the Rhodian law it is provided that

if a jettison of goods is made, for the sake of lightening the vessel, that which is given up for the good of all shall be made good by the contribution of all. *Dig.* 14. 2. 1.

In modern law. Average; otherwise called *tributum* and *collatio*. *Loccen. de J. Mar.* lib. 2, c. 8.

CONTRIBUTIO. [Lat. *contributio*, q. v.] The making up, by several parties jointly interested or indebted, to one of their number, of a loss sustained, or payment made by him for the benefit of them all.* Thus, where one of several sureties has been compelled to pay the whole of the money for which they all became bound, he is entitled to receive *contribution* from all the others, for what he has done in relieving them from a common burden. 1 *Story's Eq. Jurispr.* § 492, and notes. 1 *Smith's Lead. Cas.* 71, note. 1 *White's Eq. Cases*, 60. 3 Co. 11. 1 *Arch. Pr.* 291.

So, in maritime law, where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety, (as by throwing goods overboard to lighten the vessel,) such loss must be made good by the contribution of the others, which is termed *general average*. 3 *Ken's Com.* 232—244. 1 *Story's Eq. Jurispr.* § 490. See *General average*.

CONTRIBUTIO FABIENDA. See *De contributione facienda*.

CONTROFACERE. L. Lat. In old English law. To counterfeit. *Reg. Orig.* 42. *Sigillum controfecisset*; (he) had counterfeited the seal. *Id. ibid.* *Contröfacta.* *Id. ibid.*

CONTRÖFACTURA. L. Lat. In old English law. A counterfeiting. *Towns. Pl.* 61.

CONTROLLER, erroneously written **COMPTROLLER.** [L. Lat. *contrarotulator*; L. Fr. *contrerouleür*.] In old English law. An officer who took notes of any other officer's accounts or receipts, to the intent to discover him if he dealt amiss. *Fleta*, lib. 1, c. 18. *Cowell. Stat.* 19 Edw. III. c. 3. One who kept a roll for this purpose, called a *counter-roll*,* or *check-roll*. *Finch's Law*, b. 4, ch. 1, p. 245. See *infra*.

In modern law. An officer who has the inspection, examination or controlling of the accounts of other officers; one who keeps a counter-register of accounts. *Jacob. Whishaw. Webster.* The office of

the Roman *antigraphus* (q. v.) was of a similar character; *cui id muneris injunctum erat, ut observet pecuniam, quam in usum principis vel civitatis collegerunt exactores*. *Budeus*, cited in *Cowell*.

* * This word is frequently written, and sometimes defined, as though it were derived from the Fr. *compte*, or old English *account*, an account. The error of this derivation, however, is easily seen on reference to the L. Lat. and L. Fr. forms, (*contratulator*, *contrerouleux*, from the latter of which the English *controller* is undoubtedly taken,) which show it to be compounded of *contra*, or *contre*, against, and *rotulator*, *rouleur*, an enroller; making its true signification to be the keeper of a *counter-roll*, i. e. a roll intended as a check upon another officer's roll or account. See the definition *supra*. The correctness of this etymology is strikingly confirmed by the composition of the word *antigraphus*; (Gr. *anti*, against, and *γράφειν*, to write,) the title of an officer who was charged with a similar duty in the Roman law. See *supra*. *Controller of the pipe* is defined by *Cowell*, to be an officer who "keeps a *contra-rollment* [or *controlment*] of the pipe." So, by the Stat. 3 Edw. I. c. 10, sheriffs are directed to have or keep *counter-rolls* with the coroners, &c. *Termes de la Ley*, voc. *Counter-rolls*. And in *Britton*, the sheriff is expressly declared to be the coroner's *controller* in all his office; (*son contrerouleux en tout son office*). *Britt.* c. 1. This was so, however, at an earlier period. *Bract.* fol. 121 b, 140 b. See *Counter-roll, Roll*.

CONTROLMENT. In old English law. The controlling or checking of another officer's account; the keeping of a counter-roll. "The receipt, controlment or payment of the king's money." *Stat. 5 Edw. VI.* c. 16. Sometimes called *contra-rollment*. See *Controller*.

CONTROVER. [L. Fr. *controuveur*.] In old English law. An inventor or deviser of false news. 2 *Inst.* 227.

CONTROVER. L. Fr. To contrive. *Controvee*; contrived. *Kelham*.

CONTROVERSY. [L. Lat. *controversia*, from *contra*, against, and *vertere*, to turn.] A dispute; a suit at law or in equity; a civil action or proceeding. *Story on Const.* § 1674, and note.

CONTROVERT. [L. Lat. *controvertere*.] To dispute; to deny; to oppose or contest; to take issue on.

CONTUBERNIUM. Lat. In the Roman law. The marriage of slaves; a permitted cohabitation. *Cooper's Justin. Inst. Notes*,* 420. *Adam's Rom. Ant.* 50. *Taylor's Civ. Law*, 287.

CONTUMACE CAPIENDO. See *De contumace capiendo*.

CONTUMACY. [Lat. *contumacia*, *contumacia*.] In practice. Disobedience to the rules or orders of a court, especially a refusal to appear in court when legally summoned. *Wharton's Lex.* Used as a synonyme of *contempt*, although it seems properly to have a stronger meaning, as of open contempt, or contempt wilfully and stubbornly persisted in.* *Reg. Orig.* 65. *Bract.* fol. 127 b.

CONTUMAX. Lat. A contumacious person; a person guilty of contumacy, (q. v.)

CONTUTOR. Lat. In the civil law. A co-tutor, or co-guardian. *Inst.* 1. 24. 1.

CONUS. L. Fr. Known. See *Lieu conus*.

CONUSANCE. In English law. Cognizance or jurisdiction. *Conusance of pleas.* *Termes de la Ley.* See *Cognizance*.

CONUSANS. L. Fr. Acknowledgment. *Litt.* sect. 499. *Conusant*; knowing; understanding; privy to.

CONUSOR. See *Cognizor*.

CONUSTRE. L. Fr. To acknowledge. *Litt.* sect. 499.

CONVALESCERE. Lat. In civil and old English law. To gain or acquire strength, force or validity; to become valid. *Ex postfacto non convalescet*; it shall not acquire validity from a subsequent act. *Dig.* 30. 41. 2. *Convalescit donatio facta à furioso*; a gift made by a lunatic becomes valid, &c. *Bract.* fol. 11 b. *Ex ratihibitione convalescit*; it acquires validity from the ratification. *Id.* fol. 40. *Ex charta de confirmatione subsequente convalescit prima charta de donatione quæ ab initio fuit invalida*; the first deed of gift, which was originally of no effect, acquires validity from the subsequent deed of confirmation. *Id.* fol. 389.

Quod ab initio non valet, tractu temporis non convalescet. That which is not valid at the beginning, shall not acquire validity by course of time. *Co. Litt.* 35 a. This maxim is almost in the same words with that of the civil law: *Quod ab initio vitiosum est, non potest tractu temporis convalescere.* *Dig.* 50. 17. 29.

CONVEER. L. Fr. To convey. *Kelham*.

CONVENABLE, *Covenable*. L. Fr. and Eng. In old English law. Suitable; agreeable; convenient; fitting. *Litt. sect. 103. Stat. 27 Edw. III. st. 2, c. 21. Stat. 2 Hen. VI. c. 2. Cowell.*

CONVENCIO. L. Lat. A covenant or agreement. An old form of *conventio*, (q. v.) See *Dyer*, 57.

CONVENIENT. [Lat. *conveniens*.] Proper; just; suitable. 7 *Man. & Gr.* 41, arg.

CONVENIRE. Lat. In the civil and old English law. To sue; to prosecute. *Conveniri*; to be sued. *Dig. 5. 1. Inst. 4. 9. pr. Id. 4. 8. 3. Id. 4. 11. pr. 2. Conveniendi sunt*; they are to be proceeded against. *Fleta*, lib. 2, c. 66, § 21. Hence the Scotch *convens* and *convener*.

To agree. *Dig. 2. 14. 2, 4.*

CONVENIRE. L. Lat. In old English law. To covenant. *Convenit, promisit et agreevit*; (he) covenanted, promised and agreed. *Hob.* 34 b.

CONVENIT. Lat. In civil and old English law. It is agreed; it was agreed. *Hoc servabitur quod initio convenit*. That shall be observed which was originally agreed to. *Dig. 50. 17. 23. Scias quod convenit inter A. petentem et B. tenentem*; know that it is agreed between A. demandant, and B. tenant. *Bract.* fol. 73 b.

CONVENT. [Lat. *conventus*, from *convenire*, to assemble together.] The fraternity of a religious house, as of an abbey or priory. *Bract.* fol. 16, 347. Frequently written *covent*. *Litt. sect. 133. Co. Litt.* 94 a, b.

CONVENTICLE. [Lat. *conventiculum*, dim. of *conventus*; a little assembly.] A private assembly or meeting for religious worship. First applied, as a term of reproach, to the religious assemblies of Wickliffe, in the reigns of Edw. III. and Richard II. Now usually applied, in England, to a meeting of dissenters from the established church. *Cowell. Blount. Wharton's Lex.* In strict propriety, the term denotes an *unlawful assembly*.

CONVENTIO. Lat. [from *convenire*, to come together.] In the civil law. A coming together of parties; a convention; an agreement. This was a term of the most general description, applying to all subjects upon which parties might come together for the purpose of entering into any engagement or transacting any business. *Conventionis verbum generale est ad omnia pertinens de quibus, negotii con-*

trahendi transigendique causa, consentiunt qui inter se agunt. Dig. 2. 14. 1. 3. It included the two leading divisions of contracts (*contractus*) and pacts (*pacta*). *Heinecc. El. Jur. Civ.* lib. 3, tit. 14, § 784.

CONVENTIO, *Convencio*. L. Lat. In old English law. A covenant; an agreement. *Breve de conventionibus*; a writ of covenant. *Reg. Orig.* 165, 166. *Si quis a conventionem recedat, succurritur alteri parti per actionem de conventionem*; if any one draws back from his covenant, the other party has a remedy by an action of covenant. *Bract.* fol. 34. And see *Id.* fol. 18 b. *Conventio duplicata*; an agreement executed in duplicate, or in two parts. *Id.* fol. 169.

Conventio vincit legem. The express agreement of parties overcomes [prevails against] the law. 6 *Taunt.* 430. *Story on Agency*, § 368. As where it is agreed that a lien shall not be lost by a transfer of possession. *Id. ibid.* *Conventio legi derogat*. Agreement derogates from law. *Fleta*, lib. 4, c. 20, § 5. See *Modus et conventio vincunt legem*. These maxims are qualified by the following:

Conventio privatorum non potest publice juri derogare. The agreement of private persons cannot derogate from public right; i. e. cannot prevent the application of general rules of law, or render valid any contravention of law. *Co. Litt.* 166 a. *Wingate's Max.* 746, max. 201. *Broom's Max.* 308. This is also a maxim of the civil law. *Privatorum conventio juri publico non derogat. Dig. 50. 17. 45. 1.*

CONVENTION. In English law. An assembled parliament, before any act is passed, or bill signed. *Jacob.*

More properly, an extraordinary assembly of both houses, without being convoked by the sovereign.* The parliament which restored king Charles II. was called the *convention parliament*. 1 *Bl. Com.* 151.

CONVENTIONAL. [from Lat. *conventio*, q. v.] That which is produced by, or depends upon the agreement or mutual arrangement of parties.* *Conventional estates* are those estates for life, which are expressly created by the act of the parties; as distinguished from *legal estates*, or those which are created by construction and operation of law. 2 *Bl. Com.* 120.

CONVENTUS. Lat. [from *convenire*, to come together.] In old English law. An assembly. *Conventus magnatum vel procerum*; an assembly of the great men

or nobles. One of the ancient names of the English parliament. 1 *Bl. Com.* 148.

A convent. *Bract.* fol. 16, 347.

CONVENTUS JURIDICUS. In the Roman law. A court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of councillors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province. *Schmidt's Civ. Law*, Introd. 17.

CONVERSANTES. L. Lat. In old English law. Conversant or dwelling; commorant. *Stat. Marlbr.* c. 10. 2 *Inst.* 122.

CONVERSION. [Lat. *conversio*, from *convertere*, to turn towards.] An appropriation of property; one of the grounds of the action of trover. 3 *Bl. Com.* 152. 3 *Steph. Com.* 525. See *Trover*. "Conversion" and "carrying away" are not synonymous nor convertible terms. There may be a conversion without any carrying away. *Rice, J. 26 Alabama R.* 101.

CONVEY. [from L. Fr. *conveier*, *conveer*; L. Lat. *convehere*.] To pass or transmit from one to another; to transfer property, or the title to property, by an instrument in writing.

In a stricter sense, to transfer by deed or instrument under seal. See *Conveyance*.

"CONVEY." To carry or conduct, as water in pipes. 27 *Penn. St. R.* 26.

CONVEYANCE. An instrument in writing, by which property or the title to property is transferred from one person to another.

In a stricter sense, an instrument in writing under seal, (anciently termed an *assurance*,) by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, &c. 2 *Bl. Com.* 293, 295, 309. See *Assurance, Deed*. In Scotch law, it appears to be synonymous with *deed*, being defined "a deed executed according to all the forms required by law, and by which a right is either created or transferred or discharged." *Bell's Dict.*

This term is generally restricted, in its application, to transfers *inter vivos* (between living parties), though, in a large sense, it includes wills also. *Id.* 294. *Bacon's Use of the Law*, 66. The Revised Statutes of New-York have defined it to embrace "every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned, or by which the title to any real estate may

be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands." 1 *Rev. Stat.* [762], 752, § 38. See 3 *Mass. R.* 487.

CONVEYANCE. In pleading. Introduction or inducement. 3 *Wooddes. Lect.* 22. See *Inducement*.

CONVEYANCERS. Members of the legal profession, who employ themselves (sometimes, as in England, solely,) in the drawing and preparation of deeds or assurances of property. *Wharton's Lex.* 1 *Wooddes. Lect.* xci. See *Conveyancing*.

CONVEYANCING. The business or practice of preparing conveyances, especially of real estate; including the investigation of titles, the preparation of abstracts, &c. Conveyancing may be considered as both a science and an art; a science, as it embraces an acquaintance with the law of property, and particularly of the principles of alienation; an art, as it applies those principles to practice, in the framing of appropriate instruments or conveyances.* In England and Scotland, it is a highly artificial system of rules and practice, which maintains its own separate body of practitioners and professors. 1 *Steph. Com.* 466. *Warren's Law Studies*, 319, *et seq.* (Am. ed.) See *Bell's Dict.*

CONVEYER, Conveier. L. Fr. In old English law. To derive title; to derive by descent. *Litt. sect.* 703, 705, 706.

To show in pleading. *Dyer*, 79 b, (Fr. ed.).

CONVICIUM. Lat. In the civil law. An injury done by words. A species of injury (*injuria*), which consisted in charging a person with some act *adversus bonos mores*, (against good morals). It was defined by the Prætors' Edict, *Dig.* 47. 10. 15. 2. Ulpian, in his commentary on the Edict, derives the word from *con*, together and *vox*, a word, quasi *convocium*; being a collection of words, (*à collatione vocum*). *Id.* 47. 10. 15. 4.

To CONVICT. [L. Lat. *convincere*.] In practice. To condemn; to find guilty of an offence, [usually] by the verdict of a jury.* 4 *Bl. Com.* 362.

To find against the defendant in civil cases. "Whereof the said defendant is convicted, as appears of record," &c.

CONVICT. [L. Lat. *convictus*.] In practice. One who is found guilty of an offence by the verdict of a jury, or other legal de-

cision. *Staundf. Pl. Cor.* 186. *Termes de la Ley.* *Cowell. Wharton's Lex.* *Convict recusant*, in English law, was a person who had been legally prosecuted, indicted, and convicted for refusing to come to church to hear the common prayer, according to several statutes of Elizabeth and James. *Termes de la Ley.*

CONVICTION. [L. Lat. *convictio*.] In practice. The finding of a person guilty of an offence with which he has been charged, either by the verdict of a jury, [the decision of any other competent tribunal,] or on his own confession. 4 *Bl. Com.* 362.

A finding against a defendant in a civil action. See *To Convict*.

A record of the proceedings by which an offender has been convicted and sentenced. *Holthouse*. It is not sufficient that such a record contains the finding of the jury, unless it includes also the judgment of the court. 7 *Man. & Gr.* 498, arg. 15 *East*, 570. See *United States Digest*, Conviction.

CONVINCERE. L. Lat. In old English law. To convict; to condemn in a civil action. *Et si debitor convincatur, considerabitur quod querens recuperet debitum cum dampnis*; and if the debtor be convicted, it shall be considered [the judgment shall be] that the plaintiff recover the debt with damages. *Flota*, lib. 2, c. 62, § 4.

To convict; to find guilty. *Convictus de perjurio*; convicted of perjury. *Id.* lib. 4, c. 8, § 2.

CONVOCATION. [L. Lat. *convocatio*, from *convocare*, to call together.] In English law. An assembly of all the clergy, for the purpose of consulting on ecclesiastical matters. *Termes de la Ley.* *Cowell.* 2 *Steph. Com.* 541. It is in the nature of a parliament, being, in the province of Canterbury, composed of two houses, of which the archbishop and bishops form the upper house, and the lower consists of deans, arch-deacons, the proctors for the chapters, and the proctors for the parochial clergy. In York, it consists of one house only. 2 *Steph. Com.* 542. The convocation has always met in time of parliament, and although it has been long the course to summon it *pro forma* only, it is still, in fact, summoned before the meeting of every new parliament, and adjourns immediately afterwards, without even proceeding to the despatch of business. *Id. ibid.*

CONVOY. [from Fr. *convoyer*, to es-

cort; Lat. *convehere*, to convey or conduct safely.] In commercial and international law. A naval force under the command of an officer appointed by the government of a country, or under its authority, for the purpose of sailing with, and protecting its merchant vessels, and usually in time of war.* *Park on Insurance*, ch. 18. 1 *Marshall on Ins.* 360. *Smith's Merc. Law*, 227. *Abbott on Ship.* [352], 432. 2 *Archb. N. Prius*, 175. "By *convoy*, is meant certain ships of force appointed by government in time of war, to sail with merchantmen from their port of discharge to the place of their destination." *Postlethwaite's Dict. tit. Convoy*, cited 1 *Show*. 320, note.

CO-OBLIGOR. A joint obligor; one who is jointly bound with another, in a bond or obligation.

COOLING-TIME. In the law of homicide. Time for passion to subside and for reason to interpose, after provocation. See *Wharton's Am. Law of Homicide*, 179, chap. 9.

CO-OPERTIO. L. Lat. [from *co-operire*, to cover.] In old English law. A covering, or exterior coat, as the bark of a tree. *Cowell. Quercus discooperta*; an oak stripped of its bark, or debarked. *Id.*

CO-OPERTORIUM. L. Lat. In old records. A covering. *Cowell.* See *Co-opertio*.

CO-OPERTUM. L. Lat. [from *co-operire*, to cover.] In forest law. A covert; a thicket (*dumetum*) or shelter for wild beasts in a forest. *Cart. de Foresta*, c. 12. *Reg. Orig.* 258. *Spelman. Extra co-opertum forestæ*; without the covert of the forest. *Flota*, lib. 2, c. 41, § 2.

CO-OPERTURA. L. Lat. [L. Fr. *co-operture*.] In forest law. A thicket, or covert of wood. *Blount.* See *Co-opertum*.

CO-OPERTUS, Co-operta. L. Lat. [from *co-operire*, to cover.] In old English law. Covered. *Aquâ co-opertâ*; covered with water. 2 *P. Wms.* 128.

Covert. *Femina viro co-operta*; a feme covert. 3 *Leon.* 81, case 122. *Fuit co-operta et adhuc est co-operta de R. W.*; was covert and still is covert of R. W. *Yearb. P.* 18 Hen. VI. 2. See *Covert*.

COPABLE. L. Fr. Guilty. *Kelham.*

COPARCENARY. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises, in England, either by common law, or particular custom. By common law, as where a person seised in fee simple or fee tail, dies, and his next heirs

are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they all inherit, and these co-heirs are then called *coparceners*, or, for brevity, *parceners* only. *Litt. sect. 241, 242. 2 Bl. Com. 187.* By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, &c. *Id. ibid. Litt. sect. 265. Co. Litt. 163 b. 1 Steph. Com. 319. 2 Crabb's Real Prop. 931, 932, § 2296.* It resembles, in some respects, an estate in joint tenancy, but in others they materially differ. *1 Steph. Com. 319.* In the United States, it is not distinguishable from tenancy in common. *4 Kent's Com. 367.*

Lord Coke observes that this tenancy is called in the ancient books *adaquatio*, and sometimes *familia herciscunda*, an estate to be divided. *Co. Litt. 164 b.* Both these terms, however, (the former in the feudal, the latter in the civil law,) seem to denote a process for dividing an estate, rather than the estate itself. See *Adæquatio, Familia herciscunda.*

COPARCENERS. [L. Lat. *coheredes participes, coparticipes.*] Persons holding an estate in coparcenary. See *Coparcenary*. Persons to whom an estate of inheritance descends jointly, and by whom it is held as one estate.* *2 Bl. Com. 187. Bract. fol. 71 b, 75. See Parceners.* This word was anciently applied to males as well as females, but is now usually confined to the latter. In Virginia, however, the statute of descents still applies it to both male and female heirs. *4 Kent's Com. 367.*

COPARE, Colpare. L. Lat. [L. Fr. *copper.*] In old records. To fell, cut, or chop; as wood. *Spelman.*

COPARTICEPS. L. Lat. In old English law. A coparcener. *Co. Entr. 377, 711.*

COPARTNER. See *Partner*.

COPARTNERSHIP. See *Partnership*.

COPARTNERY. In Scotch law. The contract of copartnership. A contract by which the several partners agree concerning the communication of loss or gain, arising from the subject of the contract. *Bell's Dict.*

COPE, Coppe. Sax. A hill. *Co. Litt. 4 b.* The top or summit of a thing, as of a house. *Cowell.*

A tribute paid out of lead mines in England. *Blount.*

COPIA. Lat. In civil and old English law. Opportunity or means of access. *Copiam præstare*; to grant opportunity. *Cod. 4. 21. 21. Copiam facere*; to grant

opportunity of access. *Sui copiam facere*; to put one's self within another's reach; to grant the means of access; to appear in court. *Bract. fol. 20 b, 364 b. Fleta, lib. 3, c. 9, § 24. Sui copiam non facere*; to fail to appear to an action. *Inst. 1. 26. 9. Fleta, lib. 6, c. 14, § 1.*

Copiam scripturæ facere; to grant an opportunity of knowing the contents of a writing, as by showing it. *Bract. fol. 34. Fleta, lib. 3, c. 14, § 3. Copiam habere*; to have access, or the means of inspection. *Bract. fol. 389 b. See Copy.*

COPIA. L. Lat. [L. Fr. *copie.*] In old English law. A copy. *Clerke's Prae. Cur. Adm. tit. 48. Copia libelli*; the copy of a libel. *Reg. Orig. 58. Breve de copia libelli deliberanda*; a writ to deliver the copy of a libel. *Id. ibid. Co. Litt. 57 b.* Lord Coke says it is a Latin word made from the Fr. *copie*, and refers to the writ in the Register, to show its antiquity. But from the manner in which it is used by Bracton, it seems rather to be the legitimate Latin word *copia*, (*supra*,) applied in a peculiar sense. See *Copy*.

COPIA VERA. L. Lat. In Scotch practice. A true copy. Words written at the top of copies of instruments. *3 How. St. Trials, 427, 430, 432.*

COPIE. Fr. and L. Fr. In French and old English law. Copy; a copy. *Ord. Mar. liv. 1, tit. 9, art. 8, § 22. Guyot, Inst. Feod. ch. 2, art. 6. Yearb. H. 9 Hen. VI. 21. Litt. sect. 73, 75.*

A multitude; a great number. *Kelham.*

COPPIRE. L. Lat. [from Sax. *coppe*, the top.] In old records. To cover. *Coppire domum*; to cope a house, or to lay on the roof and covering on the top of it. *Par. Antiq. 575.* The word "coping" is still used in nearly the same sense.

Copulatio verborum indicat acceptionem in eodem sensu. Coupling of words together shows that they are to be understood in the same sense. *Bacon's Works, vol. iv. p. 26. Broom's Max. 294, [450].*

COPY. [L. Lat. *copia, transcriptus*; Fr. *copie*; Lat. *exemplum.*] The transcript or double of an original writing, as a charter, roll, patent, deed, writ, pleading, affidavit, &c.* *Termes de la Ley. Cowell.* Copies are of two kinds; under seal, and not under seal.

Copies under seal are called exemplifications, and are either under the great seal, or under the seal of the court in which the originals are filed or deposited.* *2 Tidd's*

Pr. 800. Copies *not* under seal are also, in England, of two kinds; sworn copies and office copies. A *sworn* or *examined* copy is a copy sworn (by the party intending to use it) to have been examined with the original record or paper, being first prepared by the officer having custody of it. An *office* copy is a copy made out by the officer in whose hands the original is, without being examined. *Archb. N. Pract.* 357. A *certified* copy, in the United States, is a copy certified to be such by the officer having the custody of the original, (being previously compared by him with such original,) and usually under seal, unless where the original is filed with the clerk of a court, and the copy is to be used in the same court. Sworn copies are not generally in use.

* * The word *copy* seems obviously derived from the Latin *copia*; the change from the classical (leave, liberty, opportunity,) to the law sense, (a transcript,) being very significantly shown in the use made of it by Bracton. Speaking of that description of deeds then called *chartæ communes*, (i. e. those in which both parties had a *common* interest, as involving a mutuality of obligation,) this author observes that where such a deed remained in the possession of the grantee, the grantor might, in a case where his interest was concerned, demand to have it shown to him; (*donator, eo quod sua interest, petat a donatorio exhibitionem*;) and that where there was a dispute or doubt between the parties as to the right of either, the grantee was bound to exhibit the instrument, (*exhibeat instrumentum*;) or he could have no action, &c. *Bract.* fol. 34. So, in case of a dispute between the grantor of a manor and the tenant or holder of it, the same author observes that the latter was bound to show his deed, (*ostendere debet tenens chartam*;) to make good his plea. *Id. ibid.* And he then proceeds to lay down the general rule, that whenever a party wished to make use of a private writing for his own benefit, in a judicial proceeding, he must allow his adversary to inspect and use it against him, (*copiam faciet adversario suo contra se*); but that a demandant had no right to require that instruments in the hands of the tenant should be shown him for the purpose of enabling him to count or declare, since a party was not bound to arm his adversary against himself, unless the instruments were common, (i. e. of the kind above described). *Copiam facere*, in this last quotation, is ob-

viously the common classical expression signifying to impart a thing, to allow a privilege in, or respecting it. See *Copia. Copiam facere scripturæ* is to grant a party the privilege or opportunity of acquainting himself with the contents of a writing, which was done, as clearly appears from the context, by showing it to him. See *Bract.* fol. 389 b. Convenience, no doubt, suggested the practice, in most cases, of delivering a transcript instead of showing the original; and when the privilege (*copiam*) came to assume this shape, it is easy to see how the word itself would gradually acquire a new and technical meaning, attaching, as a name of description, to the particular transcript so made use of. Hence, probably, was formed the Fr. *copie*, from which is obviously derived the English *copy*. See *Transcript*. So that, by this process, the classical *facere copiam* would ultimately become (as it did) good Law Latin, signifying to make a copy. *Copiam concedere et liberare*, (to grant and deliver a copy,) is the language of the old writ *de copia libelli deliberanda. Reg. Orig.* 58. And that this technical application of the word *copia* was by a very easy transition, will appear from a comparison of the *copia libelli* of this writ with the *libri copia* of Aulus Gellius in the following passage: *Catonis verba huic prorsus commentario indidissem, si libri copia fuisset id temporis cum, &c. A. Gell. Noct. Att. i. 23.* The sense, it will be seen, is the same, whether the words "*si libri copia fuisset*" be translated "if I had had the means of consulting the book," or in the modern phrase, "if I had had a copy of the book." And see *Traslado*.

COPYHOLD, *Copihold*. [*L. Lat. tenura per copiam rotuli curiæ*; Fr. *tenure per copie de court rol.*] A tenure or holding by copy of court-roll. A species of estate at will, or customary estate in England, the only visible title to which consists of the copies of the court-rolls, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. 2 *Bl. Com.* 94, 95, 147. *Co. Litt.* 58 a. *Litt.* sect. 75. It is an estate at the will of the lord, yet such a will as is agreeable to the custom of the manor, which customs are preserved and evidenced by the rolls of the several courts baron, in which they are entered. 2 *Bl. Com.* 95. It is a base tenure, founded upon immemorial custom.* 2 *Steph. Com.* 43, 44. See 7 *East*, 299.

In a larger sense, *copyhold* is said to import every *customary* tenure, (that is, every tenure depending on the particular custom of a manor,) as opposed to free socage, or *freehold*, which may now (since the abolition of knight-service) be considered as the general or common law tenure of the country. 1 *Steph. Com.* 210. See 1 *Crabb's Real Prop.* 606, § 765, *et seq.* *Burton's Real Prop.* ch. vii. *Watkins and Scriven on Copyholds.*

* * Copyhold is lineally descended from the ancient tenure of pure villenage, the will of the lord by which the villein held having become, in the course of time, so far modified and controlled by custom, as to allow the tenant to hold his lands, on performance of the required services, in spite of any determination of the lord's will. 2 *Bl. Com.* 95. 1 *Steph. Com.* 201, 210. 1 *Reeves' Hist. Eng. Law*, 39. Copyhold is, in other words, villenage divested of all its slavish incidents. *Crabb's Hist. Eng. Law*, 536. Villeins appears to have been called *customarii tenentes* (customary tenants) in the fourth year of Edw. I.; *tenants per roll solonque le volunt seigneur*, (tenants by roll according to the will of the lord,) in 42 Edw. III. 35; *tenants per le verge*, (by the verge,) in 14 Hen. IV. 34; and *copyholders* in 1 Hen. V. 11. *Co. Litt.* 58. 3 *Reeves' Hist. Eng. Law*, 312, 313.

COPYHOLDER, *Copiholder*. [L. Fr. *tenant per copie de court rol.*] In English law. A tenant by copyhold; so called from the *copy* of the court roll delivered to him by the steward of the manor, as the evidence of his title. *Co. Litt.* 58 a. *Litt. sect.* 75. 2 *Bl. Com.* 95. Otherwise called *copy-tenants*. *Brownl.* part 2, 77.

COPYRIGHT, formerly termed **COPY**. The exclusive right which the law allows an author, (or a person purchasing from an author,) of printing, publishing and selling a written composition during a certain period of time.* 2 *Chitty's Bl. Com.* 405—408, and notes. 2 *Steph. Com.* 94—99. 2 *Kent's Com.* 373—384. *Curtis on Copyright*, ch. 1. The exclusive right of multiplying copies of an original work or composition, and consequently preventing others from so doing. 14 *Mees. & W.* 316. Called by Mr. Stephen "an incorporeal chattel." 2 *Steph. Com.* 72, 94. Lord Mansfield, in *Millar v. Taylor*, defined "copy" to be "an incorporeal right to the sole printing and publishing of somewhat intellectual communicated by letters," and

observed that this was the technical sense in which the term had been used for ages. 4 *Burr.* 2303, 2396.

A copyright may be had in maps, charts, prints, cuts, engravings and musical compositions, as well as in books. 2 *Kent's Com.* 373. The copyright of a map is an exclusive right to the multiplication of copies for the benefit of the author or his assigns, disconnected from the plate, or any other physical existence. It is an incorporeal right to print and publish the map, or, as said by Lord Mansfield, in *Millar v. Taylor*, "a property in notion, and has no corporeal, tangible substance." Nelson, J. 14 *Howard's R.* 530. See *Curtis on Copyright. United States Digest*, Copyright.

COQUA. L. Lat. In old records. A raft; a cock-boat. *Spelman.*

COR, *Core*. L. Fr. Heart. *Kelham.*

CORAAGE. See *Coraagium*.

CORAAGIUM. L. Lat. [from *corus*, a measure of corn.] In old English law. A species of common tribute or prestation, mentioned by Bracton, as arising on certain necessary and unusual occasions, and in that respect distinguished from ordinary services and customs. It is classed with hidage and carvage, and is supposed to have been a contribution of certain measures of corn. *Bract.* fol. 37, 35. *Cowell. Termes de la Ley.*

CORAM. Lat. Before; in presence of. Applied to persons only. *Towns. Pl.* 22. *Brevia coram rege, vel coram justitiariis de banco, vel coram justitiariis itinerantibus*; writs before the king, or before the justices of the bench, or before the justices itinerant. *Stat. Marlbr.* c. 5. See *Before*.

In the civil law, this word imported intelligence or understanding in the person before whom the act was done; *nisi intelligat—non videtur coram eo fecisse. Dig.* 50. 16. 209.

CORAM IPSO REGE. Lat. Before the king himself. The style of the court of King's Bench, it having been originally held before the sovereign in person. 3 *Bl. Com.* 41. *Bract.* fol. 362.

CORAM NOBIS. Lat. (Before us.) In English practice. The name given to writs of error on judgments of the court of King's (or Queen's) Bench, so called from that clause in the old forms which described the record and process as remaining "before us," (*quæ coram nobis*

resident); that being the style of the court. 1 *Arch. Pr.* 234, 276. 2 *Tidd's Pr.* 1136. See *Coram ipso rege*.

Writs of error to correct the judgments of other courts, (such as the Common Pleas,) are said to be *coram vobis*; the record and process being stated to remain "before you," (*quæ coram vobis resident*), that is, before the justices of the court. *Id.* 1137. This description seems to express more accurately the distinction between writs *coram nobis* and *coram vobis* than that which represents the former as lying to the *same* court in which the judgment was given; and as lying for errors *in fact*; neither of which features seem to be peculiar to it. *Id.* 1136, 1137. 2 *Impey's Pr. K. B.* 811. 1 *Arch. Pr.* 234, 276. 2 *Saund.* 100, 101 a, note. See *Coram vobis*. But see 3 *Maryland R.* 325. 1 *Hempstead's R.* 62.

CORAM NON JUDICE. L. Lat. Before one who is not a judge, or who has not jurisdiction. 3 *Bl. Com.* 111. 10 *Co.* 76. 1 *Kent's Com.* 317. Where an action is brought in a court whereof the judges have not any jurisdiction, it is said to be *coram non judice*. *Cro. Eliz.* 530. *Cro. Jack.* 531. *Termes de la Ley.* *Broom's Max.* [69.] It is also sometimes applied to proceedings even in a court having jurisdiction, where they become void by irregularity. *W. Jon.* 170. *Sententia a non judice lata nemini debet nocere*. A sentence passed [judgment given] by one who is not a judge, ought to harm no one. *Fleta*, lib. 6, c. 6, § 7.

CORAM PARIBUS. L. Lat. Before the peers or freeholders. *Feud. Lib.* 2, tit. 32, 39, 46. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus*. 2 *Bl. Com.* 307. *Coram paribus de vicineto*; before the peers or freeholders of the neighborhood. *Id.* 315. See *Pares, Peers*.

CORAM SECTATORIBUS. L. Lat. Before the suitors. *Cro. Jac.* 582.

CORAM VOBIS. Lat. (Before you.) In English practice. A name given to writs of error on judgments of other courts than the King's (or Queen's) Bench; especially the court of Common Pleas. See *Coram nobis*. A writ of this kind lies to the Common Pleas to correct its own judgments; as for errors *in fact*. 2 *Tidd's Pr.* 1137, 1142, 1143.

CORAUNT. L. Fr. Passing; running; current. *Kelham*.

CORETES. L. Lat. In old records. Pools; ponds; fish-ponds. *Cowell*.

CORN. In English law. Grain; including wheat, rye, oats and barley. In the common memorandum in policies of insurance, it includes malt, peas and beans, but not rice. 2 *Arnould on Ins.* 853.

CORN RENTS. Rents reserved in corn, that is, in wheat or malt. Proportions of rents on college leases, [being one-third,] directed by the statute 18 *Eliz. c. 6*, to be reserved in wheat or malt. 3 *Steph. Com.* 141, 142. 2 *Bl. Com.* 322.

CORNAGE. [L. Lat. *cornagium*, from *cornu*, a horn.] In old English law. Service of the horn. A kind of tenure in grand serjeanty, the service of which was to blow a horn, when any invasion of the northern enemy [the Scots,] was perceived, [in order to alarm the country]. *Termes de la Ley*. This was a common tenure in the marches of Scotland. *Litt. sect. 156. Co. Litt.* 107 a. 2 *Bl. Com.* 74. *Camd. Brit.* 609. *Cowell*. See 3 *How. St. Trials*, 866.

CORNARE. L. Lat. [from *cornu*, a horn.] In old English law. To wind or blow a horn. *Spelman. Faciat cornari, ne videatur furtivè hoc facere*; he shall cause a horn to be blown, that he may not seem to do this by stealth. *Cart. de For. c. 11*.

CORNER. In American land law. An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other. See *Lines and corners, Butts and bounds, Abutments*.

CORNERUM. L. Lat. In old English law. A corner or angle. *Et sic usque cornerum del Parkeres Breche de Beckele. Rot. Peramb. Forest.* 29 *Edw. I. m. 8*.

CORNUB'. An abbreviation of *Cornubia*, Cornwall, in old English pleadings and records. *Towns. Pl.* 147. *Cowell, Appendix.* 1 *Inst. Cler.* 28.

CORODIUM, Corrodium, Corredium. L. Lat. In old English law. A corody. *Spelman.* 2 *Inst.* 630. See *Corody*.

CORODY, Corrody. [L. Lat. *corodium, corrodium, corredium*.] In old English law. A right of sustenance; or a right to receive certain allotments of victual and provision for one's maintenance. 2 *Bl. Com.* 40. Otherwise called a pension. 1 *Id.* 283. "A partition for one's sustenance." *Finch's Law*, b. 2, c. 12.—An allowance of food, and sometimes of other necessities, which a person was entitled to, for life, years or in fee, and usually from a religious house. It belonged to the found-

ers of these houses of common right, (unless the foundation was in frankalmoign,) and in this way became frequently due to the king.* *Spelman. Termes de la Ley.* See *Barringt. Obs. Stat.* 80, note [y]. It was a species of incorporeal hereditament, but is now obsolete. 2 *Bl. Com.* 40. 1 *Id.* 283. 2 *Inst.* 630. 1 *Crabb's Real Prop.* 252, § 259. *Crabb's Hist. Eng. Law*, 252.

CORODIO HABENDO. See *De Corodio habendo*.

CORONA. Lat. [Fr. *corone*.] The crown. *Placita coronæ*; pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor. See *Pleas of the crown*.

CORONARE. L. Lat. [from *corona*, a crown.] In old records. To give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest. *Cowell*.

CORONATOR. L. Lat. [from *corona*, q. v.] A coroner. *Reg. Orig.* 177. *Spelman.* 2 *Inst.* 31. *Bract.* fol. 121, 122. *Nullus vicecomes, constabularius, coronatores vel alii ballivi nostri teneant placita coronæ nostræ; no sheriff, constable, coroners or other our bailiffs, shall hold pleas of our crown.* *Mag. Cart. Johan.* c. 24. *Id.* 1 *Hen.* III. c. 19. *Id.* 9 *Hen.* III. c. 17. *Ut nullus vicecomes intromittat se de placitis ad coronam pertinentibus sine coronatoribus.* *Artic. Mag. Cart. Reg. Joh.* c. 14.

CORONATORE ELIGENDO. See *De coronatore eligendo*.

CORONATORE EXONERANDO. See *De coronatore exonorando*.

CORONER. [L. Lat. *coronator*, from *corona*, the crown; Sc. *crouner*. See *infra*.] A county officer of great antiquity at the common law, whose powers and duties are both judicial and ministerial, but principally the former. It has always been his peculiar office to inquire into the causes of violent or sudden deaths, by a jury of proper persons, upon view of the dead body, (*super visum corporis*). *Bract.* fol. 121. *Stat. 4 Edw. I. De officio Coronatoris.* 1 *Bl. Com.* 346, 348. 3 *Steph. Com.* 33—36. Another branch of his judicial office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning treasure trove, who were the finders and where it is, and whether any one be suspected of having found and concealed a treasure. *Bract.* fol. 121, 122. 1 *Bl. Com.* 349. The min-

isterial office of the coroner is only as the sheriff's substitute in executing process. 3 *Steph. Com.* 37. This was part of his duty as early as the time of Bracton. *Bract.* fol. 75. Coroners are also, by virtue of their office, conservators of the public peace. *Britt.* c. 1. 1 *Bl. Com.* 347. See *Conservator of the peace*. All these duties continue to be attached to the office of coroner, in the United States. 2 *N. Y. Rev. St.* [742.] 622, § 1, *et seq.* 1 *Id.* [690], 688, § 2. *Id.* [380—382, §§ 78—86.] 373, 374, §§ 89—97. See *United States Digest*, Coroner.

* * The name *coroner* seems clearly derived from the important part which the officer bearing it originally took in the prosecution of those offences which concerned the crown, (L. Fr. *corone*; Lat. *corona*). 2 *Reeves' Hist. Eng. Law*, 12. The coroner (*coronator*) is first mentioned by name in *Magna Charta*, (c. 17, see *coronator*); although allusion is made to the office in the *capitula* of Henry II. and in those given in the reign of Richard I. to the justices in eyre, wherein they were commissioned to choose three knights and one clerk in every county to be *custodes placitorum coronæ*. *Crabb's Hist. Eng. Law*, 150. According to the *Mirror*, (c. 1, § 3,) the office was established by the Saxon kings, but it is most probable that it was created soon after the conquest; the coroner being appointed, together with the sheriff, to keep the peace, when the earls gave up the wardship of the county. *Crabb's Hist.* 149, 150. 1 *Bl. Com.* 347. This word itself seems to be essentially French, being constantly used by Britton in his first chapter, which is entitled "*De Coroners*."

The office of coroner has, in modern times, retained but a trace of its ancient dignity and importance. Coroners are declared in Britton to be, in every county, the principal keepers of the peace, to bear record of pleas of the crown. Their duties (which are minutely described in the first chapter of this author, and in the second tract of the third book of Bracton, entitled "*De corona*,") embraced not only the modern duty of holding inquests over the bodies of persons slain or suddenly deceased, but the examination of the bodies of living persons who had been wounded or otherwise corporally injured, the taking of criminal appeals, abjurations of the realm, &c. An important feature of their ancient

office was the keeping of *rolls* or records of every thing done before them, which rolls were sometimes received as conclusive evidence. *Bract*, fol. 140 b, lib. 3, tr. 2, c. 20. See *Counter-roll*.

CORPORAL. [Lat. *corporalis*, *corporale*, from *corpus*, q. v.] Bodily; personal.

CORPORAL OATH. [Lat. *corporale sacramentum*.] An oath taken by laying hand on the gospels, as by actual contact of the person. 3 *Inst.* c. 74. *Cowell*, voc. *Oath*. *Tacto per se sancto evangelio*; having personally touched the holy gospel. *Cro. Eliz.* 105. The oath of proctors and advocates, in the English consistory courts, is in the following words: *Ego, A. B. ad ista sancta Dei evangelia per me corporaliter tacta juro, quod, &c.*; I, A. B., on these holy gospels of God, by me *corporally touched*, do swear, that, &c. *Hallifax*, *Anal.* Appendix, No. vi.

In the case of *Jackson v. The State*, (1 *Indiana*, *Carter's*, R. 184,) it was decided that the term "corporal oath" did not necessarily import an oath taken on the gospels, but that it was merely a synonyme of "solemn oath;" and that an oath taken with the uplifted hand might be properly described by either term. The court considered the objection that an oath taken in the latter form was not a corporal oath, to be hypercritical, and observed that "however it may have been in somewhat olden time in Europe, we think that now, at least in our state, *corporal* oath and *solemn* oath are used synonymously." *Id.* 184. The court refer to and adopt the definition of corporal oath given by Webster:—"a solemn oath, so called from the ancient usage of touching the *corporale* or cloth that covered the consecrated elements."

It may have been that oaths were sometimes, as in ecclesiastical cases, taken by touching the *corporale*, as described in the definition just quoted. But the true judicial oath appears to have been, from the earliest Christian period, uniformly taken by either holding or touching the holy gospels or evangelists; and the authorities clearly show that it was from this corporal touch, or actual contact of the body (*corpus*) of the person swearing with the book sworn by, that the oath derived its distinctive name. As early as the 8th Novel of Justinian, the form of an official oath, as prescribed by law, was in these words: "I swear by Almighty God, &c.

and the four gospels which I hold in my hands, (*& ἐν ταῖς χερσὶ μου κρατοῦν*) that I will," &c. *Nov.* 8, ad fin. To this appears to have succeeded the form of *touching*, which is still in use. In *Nov.* 124, c. 1, prescribing an oath to be taken by parties to actions, it is declared that they shall swear by touching the holy evangelists, *ἐκτροπίζοντες τὸν ἅγιον εὐαγγέλιον*. And in the *Feudorum Libri*, oaths were required to be made, *tactis sacrosanctis scripturis*, by touching the Holy Scriptures. *Feud. Lib.* 2, tit. 2.

The actual *corporal* touch or physical contact of the *body*, appears to have always been indispensable to give validity to an oath taken on the Scriptures, as it uniformly is at the present day, even in this country. And an oath taken in any other form, although in every sense a solemn oath, can hardly be denominated a "corporal" oath, without departing from the radical and distinctive sense of the term.

CORPORALE SACRAMENTUM. L. Lat. In old English law. A corporal oath. *Reg. Orig.* 95 b. *Bract*, fol. 74.

CORPORALIS, Corporale. Lat. [from *corpus*, a body.] In old English law. Having a body or material substance; corporeal. *Corporales res*; corporeal things; things which may be touched and seen; such as land, garments, gold and silver, &c., comprising both moveables and immovables. *Bract*, fol. 7 b, 10 b, 13 b.

Relating to, or affecting the body; bodily; personal. *Corporalis injuria non recipit estimationem de futuro*. A personal injury does not receive satisfaction from a future course of proceeding, [is not left for its satisfaction to a future course of proceeding]. *Bacon's Max.* 34, regula 6, quoted in 3 *How. St. Trials*, 71. The law, in many cases that concern lands or goods, doth deprive a man of his present remedy, and turneth him over to a further circuit of remedy, rather than to suffer an inconvenience; but if it be a question of *personal pain*, the law will not compel him to sustain it and expect remedy, because it holdeth no damage a sufficient recompense for a wrong which is corporal. *Id. ibid.* *Broom's Max.* [208.] This maxim seems to embody the general principle of law which allows to personal injuries the speediest course of remedy.

CORPORATE. [Lat. *corporatus*, *corporatus*.] Belonging to a corporation; as a corporate name.

Incorporated; as a corporate body. The

term *corporatus* occurs in the Code of Justinian. *Cod.* 11. 1. 8. *Id.* 11. 14.

CORPORATION. [L. Lat. *corporatio*, *corpus corporatum*, *villa corporata*.] An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a corporation *sole*,) or of a collection of several individuals, (which is termed a corporation *aggregate*). 3 *Steph. Com.* 166. 1 *Bl. Com.* 467, 469. Marshall, C. J. 4 *Wheaton's R.* 518, 636. Thompson, J. 14 *Peters' R.* 122, 129.—An artificial being, invisible, intangible, and existing only in contemplation of law. Marshall, C. J. 4 *Wheaton's R.* 636.—A franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested by the policy of the law, with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. 2 *Kent's Com.* 267. And see *Kyd on Corp.* Introd. 13. *Grant on Corp.* 4, 5. Otherwise denominated a *body corporate* and a *body politic*; sometimes a civil being, (*ens civile*,) and by the civilians, a *juridical*, moral or fictitious person. 2 *Bl. Com.* 37. 2 *Kent's Com.* 267. Washington, J. 4 *Wheaton's R.* 518, 657. *Angell & Ames on Corp.* Introd. 3 *Salk.* 102. 1 *Mackeld. Civ. Law*, 145, § 141. See *Body corporate*, *Body politic*, *Ecclesiastical corporation*, *Lay corporation*, *Eleemosynary corporation*, *Civil corporation*, *Public corporation*, *Private corporation*.

A corporation has been declared to be not only a *person*, (12 *Grattan's R.* 655,) but to be capable of being considered an *inhabitant* of a state, and even of being treated as a *citizen*, for all purposes of suing and being sued. 2 *Howard's R.* 497. 1 *Kent's Com.* 347, note. As to the distinction between corporations and partnerships, see *Wordsworth on Joint Stock Companies*, 4.

In New-York, the term "corporation" includes all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. *Const. of New-York*, art. viii. § 3. And see 3 *Comstock's R.* 479. 3 *Selden's R.* 328.

CORPORATION AGGREGATE. A collection of several individuals united into one body, under a special denomination, and having perpetual succession under an artificial form, and vested by the policy of

the law with the capacity of acting in several respects as an individual. *Shelford on Mortmain*, 22. 1 *Kyd on Corp.* 13. 2 *Kent's Com.* 267. Story J. 4 *Wheaton's R.* 518, 561.—A collection of individuals united in one body, under such a grant of privileges as secures a succession of members without changing the identity of the body, and constitutes the members, for the time being, one artificial person or legal being, capable of transacting some kind of business, like a natural person. Bronson, J. 1 *Hill's (N. Y.) R.* 616, 620. Of this description are the mayor and commonalty of a city, the head and fellows of a college, and in England the dean and chapter of a cathedral church. 3 *Steph. Com.* 168. This kind of corporation is called by the civilians, *collegium* and *universitas*, (qq. v.) *Dig.* 3. 4. See *Municipal corporation*, *Public corporation*.

CORPORATION SOLE. A corporation consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 *Steph. Com.* 168, 169. 2 *Kent's Com.* 273.

In the United States, a minister seised of parsonage lands, in right of the parish, is held to be a sole corporation for this purpose. 7 *Mass. R.* 445. But, in general, corporations of this kind are of rare occurrence.

CORPORATION ACT. In English law. The statute 13 Car. II. st. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town, that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person, so elected, was also required to take the oaths of allegiance and supremacy. 3 *Steph. Com.* 103, 104. 4 *Bl. Com.* 58. This statute is now repealed. 4 *Steph. Com.* 511.

CORPORATOR. A member of a corporation.

CORPORE ET ANIMO. Lat. By the body, and by the mind; by the physical act, and by the mental intent. *Dig.* 41. 2. 3.

CORPOREAL. [Lat. *corporalis*.] That

which can be touched and seen; material. *Co. Litt.* 9 a.

CORPOREAL HEREDITAMENTS.

Such hereditaments as are of a material and tangible nature, and may be perceived by the senses, consisting wholly of substantial and permanent objects, all which may be comprehended under the general denomination of land only.* 2 *Bl. Com.* 17, 18. 1 *Steph. Com.* 159. 3 *Kent's Com.* 401, 402.

CORPUS. Lat. A body; a human body. *Corpus humanum non recipit æstimationem.* The human body does not admit of valuation. *Hob.* 59.

An artificial body created by law, as a corporation, (Gr. *συνελευσις*, *synthypsis*.) *Neque societas, neque collegium, neque hujusmodi corpus*; neither a partnership, nor a corporation, nor any body of the kind. *Dig.* 3. 4. 1. See *Cod.* 6. 48. *Nov.* 136, pr. *In collegiis et capitulis semper idem corpus manet, quamvis successive omnes moriantur*; in corporations and chapters the body remains always the same, although all [the individuals composing it] die in succession. *Bract.* fol. 374 b. See *Id.* fol. 78 b.

A body or collection of laws. See *Corpus juris*.

A material substance; something visible and tangible, as the subject of a right; (*corpus cui jus inest*). *Bract.* fol. 236. *Id.* fol. 16. Something having local position, as distinguished from an incorporeal right. Thus, the *corpus* of land is sometimes distinguished from the estate or interest in it. 2 *Powell on Devises*, 412. 2 *Kames' Equity*, 342, 343. So in the Scotch law, a specific article of property is called *corpus*, as distinguished from its mere equivalent in money or other form. *Id.* 71, 167. 4 *Rob. Adm. R.* 56. So the *corpus* (capital) of an estate is distinguished from the income of it. 6 *Bell's Appeal Cases*, 222. *Phelan, J.* 21 *Alabama R.* 307. 6 *Florida R.* 450.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offence) is the fact of its having been actually committed. *Best on Presumptions*, 269—279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing; whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense, in the civil law. 1

Mackeld. Civ. Law, 284, § 240. *Bract.* fol. 38 b, 39 b, 45 b. See *Corpore et animo*.

CORPUS COMITATUS. L. Lat. In old English law. The body of a county. *Molloy de Jur. Mar.* 231. *Cro. Jac.* 514. 5 *Howard's R.* 452, 453, 462. 5 *Mason's R.* 290. The county at large, as distinguished from any particular locality within it. See *De corpore comitatus*.

CORPUS CORPORATUM. Lat. A corporation; a corporate body, other than municipal. *Burr. Sett. Cas.* 143.

CORPUS CUM CAUSA. L. Lat. (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. *Cowell. Blount.* Applied also to a writ of *habeas corpus* for the removal of a cause.* See *Habeas corpus*.

CORPUS DELICTI. Lat. In the law of evidence. The body, substance or foundation of an offence. The substantial and fundamental fact of its having been committed. Lord Stowell, 1 *Haggard's C. R.* 105. Lord Kenyon, 1 *East*, 306. *Best on Presumptions*, 269, § 201, *et seq.* The body or substance of a crime, as distinguished from the particular *form* given to it by its connection with the party accused.

The subject of a crime, or its visible effect, such as a body slain, a house burned, or their remains; *corpus* being used in its ordinary sense of a material substance. See *How. St. Trials*, 1229, 1230. *Burr. Circ. Evid.* 119, note (b). *Id.* 677.

CORPUS JURIS. L. Lat. A body of law. A term introduced in the middle ages, to signify a book comprehending several collections of law. There are two principal collections to which that appellation is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*, (qq. v.)

CORPUS JURIS CANONICI. L. Lat. The body of the canon law. 1 *Bl. Com.* 82. See *Canon law, Jus canonicum*.

CORPUS JURIS CIVILIS. Lat. The body of the civil law, as composed of the *Institutes*, *Pandects*, *Code* and *Novels*. 1 *Bl. Com.* 81. Sometimes simply termed *Corpus Juris*.

This name was not given to this collection by Justinian, nor by any of the glossators. According to Savigny, it was in use as

early as the 12th century. Dionysius Gothofredus, however, was the first who applied it as a title embracing all the collections of Justinian in one work, (A. D. 1804). 1 *Mackeldey's Civ. Law*, 89, § 98, note. See Am. ed. note to 1 *P. Wms.* 52.

CORPUS PRO CORPORE. Lat. In old records. Body for body. A phrase expressing the liability of manucaptors. 3 *How. St. Trials*, 110.

CORREDIUM. L. Lat. In old records. A corody. *Spelman*. See *Corodium*.

CORREL (pl. of *correus*.) Lat. In the civil law. Co-stipulators; joint stipulators. *Heinecc. El. Jur. Civ.* lib. 3, tit. 17. *Hallifax Anal.* b. 2, ch. 16. See *Reus*.

CORREI CREDENDI. Lat. In the civil and Scotch law. Joint creditors; creditors in *solido*. *Poth. Oblig.* part 2, ch. 4, art. 3, § 11.

CORREI DEBENDI. L. Lat. In civil and Scotch law. Debtors in *solido*. *Poth. Obl.* part 2, ch. 3, art. 8, sect. 1. Two or more persons bound as principal debtors to another. *Ersk. Inst. b.* 3, tit. 3, § 74.—Joint obligants. *Bell's Dict.*

CORREIE DE BATEL. L. Fr. Arrayed for battel. *Yearb. M.* 4 Edw. III. 12.

CORRELATIVE. [from Lat. *con*, together, and *relativus*.] Having a mutual or reciprocal relation. *Father* and *son* are correlative terms. *Son* is the correlative of *father*. *Right* and *duty* are correlative terms.

CORRODIUM. L. Lat. In old English law. A corody. 2 *Inst.* 630. *Spelman*.

CORRUMPERE. Lat. In the civil law. To corrupt; to spoil; to make worse, (*deteriorem facere*). Applied to the offence of tampering with another's slave. *Dig.* 11. 3. *Brissonius*.

CORRUPTIO. Lat. In old English law. Corruption; violation or defilement of the person. *Fleta*, lib. 1, c. 34, § 4.

CORRUPTION OF BLOOD. In English criminal law. The extinguishment of the inheritable quality of a person's blood in consequence of attainder for treason or other felony, so that he can neither inherit any estate, nor transmit it to others by descent.* 2 *Bl. Com.* 251, 256. 1 *Steph. Com.* 408—411. *Litt. sect.* 747. The law on this subject has been considerably modified by the statutes 54 Geo. III. c. 145; 3 & 4 Will. IV. c. 106; and 4 & 5 Will. IV. c. 23. 1 *Steph. Com.* 413. In the United

States, corruption of blood is abolished. 2 *Kent's Com.* 386.

CORRUPTIVE. L. Lat. In old pleading. Corruptly. *Cro. Jac.* 104.

CORS, Corse. L. Fr. Body. *Britt.* cc. 4, 11, 26, 68. *Cors pur cors*; body for body. *Id.* c. 125.

CORSEPRESENT. In English law. A mortuary or customary gift, due to the minister of a parish on the death of a parishioner, was anciently so called from its being brought to church along with the corpse, when it came to be buried. 2 *Bl. Com.* 425, 426. 3 *Steph. Com.* 148. See *M.S.* cited in *Blount*.

CORSNED. [from Sax. *cors*, a curse, and *sned*, a cake or piece of bread.] In Saxon law. The morsel of execration; (*panis conjuratus*; *offa execrata*, or *judicialis*). A species of ordeal in use among the Saxons, performed by eating a piece of barley bread over which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but if it stuck in his throat, it was considered as a proof of his guilt. *Crabb's Hist. Eng. Law*, 30. 1 *Reeves' Hist.* 21. 4 *Bl. Com.* 345. *Spelman*.

CORT, Court. L. Fr. Short; limited. *Kelham*.

CORTEX. Lat. In old English law. Bark; the bark of trees. *Ad buscam, meremium, corticem vel carbonem emendum*; to buy brush-wood, timber, bark or coal. *Cart. de Forest.* c. 14.

The outer covering of any thing, as distinguished from the inner substance. The letter of an instrument, as distinguished from the spirit. See *Qui hæret in litera, &c.*

CORTIS. L. Lat. In old records. A court or hall. *Spelman*. See *Curtis*.

CORTULARIUM. L. Lat. In old records. A yard or court adjoining to a country farm; a curtilage. *Cowell*.

CORVÉE. Fr. In old French and Canadian law. An obligation, on the part of a tenant, to perform involuntary labor at the requirement of the lord. *Dunkin's Address*, 42. *Guyot, Inst. Feod.* ch. 19.—The duty (incumbent on a roturier, or ignoble vassal of the king,) of performing manual labor on the public roads and works of the seigneurie, during a certain number of days in each year. *Steph. Lect.* 351. Corvees originated under the Romans, to promote the culture of unprofitable imperial domains. *Id.* 19.

COSA JUZGADA. Span. In Spanish law. A cause or matter adjudged, (*res judicata*). *White's New Recop.* b. 3, tit. 8, note. *Id.* b. 3, tit. 9, c. 1.

COSCEZ, Coscet. A term applied in Domesday, to an inferior class of tenants. Supposed by Spelman, to have the same meaning with *cotmannus* and *cotarius*, (qq. v.)

COSE. L. Fr. A corrupt form of *chose*, (q. v.)

COSEN, Cozen. In old English law. To cheat. "A cosening knave." 3 *Leon.* 171.

COSENAGE. See *Cosinage*.

COSENING. In old English law. An offence, mentioned in the old books, where any thing was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. *West's Symbol.* part 2, tit. Indictments, sect. 68. The same as the *stellionatus* of the civil law. *Cowell.*

COSHERING. In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. *Cowell.*

COSIN, Cosyn, Cosen. L. Fr. [L. Lat. *consanguineus*.] In old English law. A collateral relative by blood, as a brother, sister, uncle, &c. *Litt.* sect. 389, 660.

Any relative in the ascending line, above a great grandfather, (*besayle*). *Theoll's Dig.* lib. 9, c. 5, ¶ 28. *Stat. Glocest.* c. 2. *Britt.* c. 89. See *Cosinage*.

COSINAGE, Cosenage. L. Fr. [L. Lat. *consanguinitas*.] In old English law and practice. Collateral relationship or kindred by blood; consanguinity. *Co. Litt.* 160 a.

The name of a writ (*breve de consanguineo*), that anciently lay where a man's great great grandfather, (or *tresayle*, as he was termed,) or collateral relative, beyond certain degrees, (to both of whom the title *cosin* was applied,) was seised of lands, &c., in fee on the day of his death, and afterwards a stranger entered and abated, and so kept out the heir. *F. N. B.* 221. *Reg. Orig.* 226. *Roscoe's Real Act.* 127. 3 *Bl. Com.* 186. But see *Blackst. Law Tracts*, 24.

COST, (C'o'st). L. Fr. This is. *Kelham.* A contraction of *ceo est*.

COSTAGES, Custages. L. Fr. In old English law. Costs. *Stat. Westm.* 1, c. 1. *Stat. Glocest.* c. 1. *Britt.* c. 17. *Yearb.* M. 8 Edw. III. 35. Lord Coke derives this word from the verb *constare*, and that again

from the verb *constare*; "for these *costages* must *constare* (appear) to the court to be legal costs and expenses." 2 *Inst.* 288.

COSTE, Côte. Fr. and L. Fr. A, or the side. *De coste*; from, or on the side; collateral. *Britt.* c. 89, 119.

COSTERA. L. Lat. [from Fr. *costier*; Lat. *costa*, a side.] In old English law. A coast; sea coast or shore; sea side; (*litus*; *regionis pars mari finitima*). *Spelman.* *Towns.* Pl. 224. *Per costeram maris*; by the sea-shore. *Magna Charta*, 9 Hen. III. c. 23.

COSTES. L. Fr. *Costa.* *Les costes.* *Keilu.* 48. 1. *Al costes*; at the costs. *Dyer*, 55 b. (Fr. ed.)

COSTS. [L. Lat. *custus*, *misc*; Lat. *expensæ litis*; L. Fr. *costages*, *costes*; Sc. *coists*.] In practice. The expenses which are incurred either in the prosecution or defence of an action, or in any other proceeding at law, or in equity; consisting of the fees of attorneys, solicitors and other officers of court, and such disbursements as are allowed by law.* *Stat. Glocest.* 6 Edw. I. c. 1. 2 *Inst.* 288. *Beames' Costs*, 4. 2 *Tidd's Pr.* 945, et seq. *United States Digest*, *Costs*.

Costs between attorney and client are those which are payable in every case to the attorney or solicitor, by his client, whether he ultimately succeed or not. *Costs between party and party* are those which the defeated party pays to the successful one. *Holthouse. Wharton.* *Costs* are also either final or interlocutory. See *Final costs*, *Interlocutory costs*.

COSTS DE INCREMENTO. L. Lat. In practice. Costs of increase. See *De Incremento*, *Increase*.

COSTS OF THE DAY. In practice. Costs which are incurred in preparing for the trial of a cause on a specified day, consisting of witnesses' fees, and other fees of attendance. *Archb. N. Prac.* 281. *Holthouse.*

COSTUMBRE. Span. In Spanish law. Custom; an unwritten law established by usage, during a long space of time. *Las Partidas*, part 1, tit. 2, l. 4.

COSTUS. L. Lat. In old English law. Cost. *Stat. Westm.* 2, c. 46.

COTA, Chota. L. Lat. [Sax. *cote*.] In old English law. A cot or hut, (*tugurium*). *Spelman.* *Blount*.

COTAGIUM, Cottagium. L. Lat. [from *cota*, q. v.] In old English law. A cottage; a small house or cot. *Spelman*.

Shep. Touch. 10. *Co. Litt.* 56 b. See *Cottage*.

COTARIUS. L. Lat. [from *cota*, q. v.] In old English law. A cottager, or cotter. *Spelman. Domesday.*

COTELLUS. L. Lat. In old records. A small cottage. *Consuet. Domusde Farndon, MS. Cowell.*

COTERELLUS. L. Lat. In old English law. A cottager. Considered by *Spelman* and others, the same with *cotarius*. *Spelman. Co. Litt.* 56 b. But *Cowell* makes the distinction that the *cotarius* had a free socage tenure, and paid a stated firm (rent) in provisions or money, with some occasional customary service; whereas the *coterellus* seemed to have held in mere villenage, and had his person and issue and goods disposed at the pleasure of his lord. *Cowell, voc. Coterellus.*

COTERIA. L. Lat. In old records. A cot, house or home-stall. *Regist. Eccl. Christi Cant. MS. Cowell.*

COTLAND, Cotsethland. In old English law. Land held by a cottager, whether in socage or villenage. *Paroch. Antiq. Cowell.*

COTMANNUS. L. Lat. In old English law. A cotman, or cotter. *Domesday. Spelman.*

COTSETUS, Cotsethus. L. Lat. [Sax. *cotete*; the inhabitant of a cottage.] In old English law. A cottager who, by servile tenure, was bound to work for the lord. *Cowell. LL. Hen. I. c. 30. Spelman, voc. Cota, Cotarius. See Coscez.*

COTSETHLAND. [from Sax. *cote*, a cottage, *set*, or *seth*, a seat, and *land*.] In old English law. The seat of a cottage, including any land belonging to it. *Spelman.*

COTTAGE. [L. Lat. *cottagium*, *cotagium*, qq. v.] A little dwelling-house, without land. *Shep. Touch.* 94. *Co. Litt.* 56 b. 1 *Crabb's Real Prop.* 68, 69, § 87. *Cowell, voc. Cottage.* Properly, however, a cottage seems to have always had a small portion of land attached to it, (*fundi ascriptam portiunculam*,) as appears also from the terms *cotland*, *cotsethland*, *supra. Spelman.* And now, according to good authority, by the grant of a cottage, a curtilage or garden will pass as included. 2 *Ld. Raym.* 1015. 6 *Mod.* 114. 4 *Vin. Abr.* 582. *Shep. Touch.* (by Preston,) 94. See *Cottagium*.

COTTAGIUM. L. Lat. In old English law. A cottage. It must have had four

acres of land laid to it. See 2 *Show.* 279.

COTTIDIE. Lat. An old form of *Quotidie*. *Cottidianus* for *Quotidianus. Brissonius.*

COTURE. L. Fr. An enclosure. *Britt.* c. 71.

COUCHANT, Chochaunt. L. Fr. [from *coucher*, to lie down; Lat. *cubans, cubantes*.] In old English law. Lying down.

Couchant et levant; lying down and rising up. *Yearb. T.* 7 Edw. III. 50. M. 10 Edw. III. 54. This seems to have been the original phrase, instead of *levant et couchant*, (q. v.)

COUNGE, Conge. L. Fr. Leave; permission. *Herle pria counge à departer de soun breve, et habuit*; Herle prayed leave to depart from his writ, and he had it. *Yearb. P.* 2 Edw. II. 39.

COUNSAILE. L. Fr. Advice and direction in law. *Artic. sup. Chart.* c. 11.

The counsel of a party in a cause. *Dyer*, 47 b, (Fr. ed.)

COUNSEL. [L. Fr. *conseil, conseil, consail, counsaile, councel*.] In practice. An advocate; a counsellor or pleader. 3 *Bl. Com.* 26. 1 *Kent's Com.* 307. One who assists his client with advice, and pleads for him in open court. Sometimes written in the old books, *councel* and *council*. See *Advocate, Counsellor, Pleader*.

* * This word has no plural, and is used to denote either one or more counsel. It is by some supposed to be an abbreviation of *counsellor*, but rather seems to be derived from the Norman Fr. *conseil*, which occurs as a distinct word, at an early period, in the sense of *pleader*. *Assizes de Jerusalem*, ch. ix. *Id.* ch. xxvii. *Counsel* is not used as a title of office, like *barrister* and *serjeant* in England, and *counsellor* in the United States, but as a general professional designation; and is particularly applied to a client's professional adviser or advocate (one or more) in a particular matter or suit, e. g. in the expressions *a party's counsel*, and *the counsel in a cause*; in which the use of the term *counsellor* would in strictness be improper. To a certain extent, however, the terms are synonymous. See *Counsellor*. "A counsel"—"a counsellor at law." 6 *Mod.* 137. "The counsellor should give his counsel to him with [for] whom he is of counsel." 5 *Co.* 20. See *Of Counsel*.

COUNSELER. L. Fr. To counsel; to advise. *Yearb. T.* 10 Edw. III. 23.

COUNSELL. L. Fr. Advice. *Per* counsell *les serjants*. Yearb. M. 3 Edw. III. 40.

COUNSELL. O. Eng. A court. "Ne to apere before the counsell of any lord." Stat. 15 Ric. II. c. 12. Stat. 16 Ric. II. c. 2.

COUNSELLOR, COUNSELLOR AT LAW. [L. Lat. *consiliarius*, *consiliarius in lege*; L. Fr. *conseiller*.] In practice. A person whose occupation and office are to give counsel or advice as to the management of suits and other legal business, to conduct the trial or argument of causes in court, (in which sense the word is synonymous with *advocate*), and to do any other acts requiring a personal presence there.* Counsellors are officers of the respective courts in which they are licensed to practice; and the term itself is exclusively an official or professional title, the use of which is now rare in England, although very common in the United States. 1 Leon. 103. 1 Rep. Ch. Appendix, 23, 26. 6 Mod. 137. 1 Ld. Raym. 594, 595. See *Counsel, Consiliarius*.

COUNT, *Counte, Countee, Conte*. L. Fr. or Anglo-Norm. [Fr. *comte*; L. Lat. *comes*.] In old English law. An officer who anciently was the chief or governor (*præfectus vel præpositus*), of a shire in England, which was hence called a *county*, (*comitatus*); an earl. 1 Bl. Com. 398. 9 Co. 49. 3 Lev. 72. See *Comes, Comte*.

* * This term (*countee* being obviously an Anglicised form of the Fr. *comte*), was introduced on the Norman Conquest, as a title not only of office, but of honor, being the most eminent dignity in the kingdom. *Termes de la Ley*. It was after a time, however, superseded by the English *earl*, which still continues as a title of honor, although the earl has now nothing to do with the government of the county, which is devolved on the sheriff or viscount, as he was anciently called, (*vice comes*, the vice count, or earl's deputy). 1 Bl. Com. 398, 116. The term still survives in *countess*, an earl's wife, and *viscount*, the next dignity below an earl. See *Earl, Comes, County, Viscount*.

COUNT. L. Fr. and Eng. [L. Lat. *narratio*.] In pleading. A statement of a plaintiff's case in court, being the first in the series of the pleadings in an action;* a declaration, particularly in a real action. 2 Reeves' Hist. Eng. Law. 265, 267. Co. Litt. 17 a, 303 a. 3 Bl. Com. 293. Finch calls it "a large declaration of the substance of the original writ." Law, b. 4,

ch. 27. *En count countant*; in his count counting. Litt. sect. 10. The use of this term was anciently confined, for the most part, to real actions, though not exclusively. *Termes de la Ley*. F. N. B. 16, 60. D. N. Steph. Pl. Second Appendix, Note (3).

A part, section or division of a declaration, embracing a distinct statement of a cause of action. A declaration now usually consists of several of these counts; being either statements of different causes of action; or of the same cause in different forms. Steph. Pl. 267, Appendix, Note (56). Id. Second Appendix, Note (3). Gould's Pleading, ch. vi. § 2.

In criminal pleading. A particular charge in an indictment. Wharton's Proc. of Indictments, 12, note; ch. 2.

* * Count is from the Fr. *conte*, a narrative or tale, as it was at one time called in England. 3 Bl. Com. 293. Steph. Pl. Appendix, Note (56). An ancient book of forms was styled the *novæ narrationes*, or *new talys* (tales). 3 Bl. Com. 297. *Narratio*, the Latin word, has survived in the abbreviation *narr.*, a common term for a declaration. See *Narratio, Narr.* The old word *conte* signified any allegation of fact in a cause. Steph. Pl. ub. sup. Count is still, in strictness, the proper term for a declaration in a real action, although its constant use as a part of that pleading, has, in a great degree, superseded the original sense. Id. ibid. 3 Steph. Com. 659. By the new Pleading Rules of the English courts, the use of several counts in the same declaration is prohibited, unless a distinct subject matter of complaint is intended to be established in respect of each. 1 Chitt. Pl. 414.

To COUNT. [L. Fr. *counter*; L. Lat. *narrare*.] In old pleading. To state or relate a plaintiff's case, especially the demandant's claim or count in a real action;* to declare. 2 Reeves' Hist. Eng. Law, 265, 267. 3 Steph. Com. 659.

To plead orally; to argue a matter in court; to read or recite there; to recite a count; the peculiar province of a serjeant in the English Court of Common Pleas. Hence the titles of *countor* and *serjeant-countor*, (qq. v.) Passing a recovery at the bar of the Common Pleas was formerly termed *counting at bar*. Booter's Suit at Law, 68, note.

* * This term is frequently applied, in the older English reports, to one of the ceremonies performed in open court, on

taking the degree of serjeant at law. Lord Raymond, describing a call of serjeants to the bar, observes, that after being sworn, "they came to Gray's Inn Hall, where they rehearsed their counts, and were coifed, and then they walked to Westminster, and counted at the Common Pleas, according to custom," &c. 1 *Ld. Raym.* 604. So, on another occasion, he says of the serjeants, that being robed, "they were brought to the bar and counted," &c. 2 *Id.* 769. See *T. Raym.* 430, 478. Sir George Croke, describing the same ceremony, observes of the serjeants, that "every of them, after they came to the bar, had several writs and counts, which counts they recited, and after their counts recited and writs read by the prothonotary, one of the ancient serjeants imparled thereto," &c. *Cro. Jac.* 2. The same reporter, describing Sir Edward Coke's creation as a serjeant, on his being made Chief Justice of the Common Pleas, has recorded that "he was sworn in chancery as serjeant, and afterwards went presently into the treasury of the Common Pleas, and there, by Popham, Chief Justice, his party robes were put on, and he forthwith, the same day, was brought to the bar as serjeant; and presently after his writ read and count made, he was created Chief Justice," &c. *Cro. Jac.* 125. But the most minute description of this and other ceremonies attending the creation of serjeants, is given by the same reporter in the introduction to the third volume of his reports. *Cro. Car.* Introd. See *T. Jon.* 42. This characteristic ceremony of counting is still retained in the Court of Common Pleas, in cases where serjeants are created by writ issued in term. 18 *C. B.* (9 *J. Scott.*) 402. *Trin. T.* 1856. See *Serjeant at law.*

COUNTE. L. Fr. In old English law. A count or earl. *Britt.* fol. 1. *Conf. Chart.* 25 Edw. I.

A county. *Britt.* fol. 2.

A county count. *Mirr.* c. 1, sect. 15. *LL. Gul. Cong.* l. 3.

COUNTEE. L. Fr. An earl. *Litt. R.* 61, 181, 335. See *Count.*

COUNTENANCE. [L. Lat. *contenementum.*] In old English law. Credit or estimation. *Cowell.* 2 *Inst.* 28. See *Contentementum.*

COUNTER. L. Fr. [L. Lat. *narrare.*] In old English law. To count; to plead. *Ne soit oye en la court le roy a counter pur nulluy;* shall not be heard to plead in the

king's court for any man. *Stat. Westm.* 1, c. 29. *Le mester de counter;* the mystery or art of pleading. *Britt.* c. 22. *Le pl counta;* the plaintiff counted. *Yearb. M.* 8 Hen. VI. 26. *Countera;* shall count. *Fet Assaver,* § 30.

COUNTER. [L. Lat. *narrator.*] A pleader. See *Countor.*

COUNTER. [L. Lat. *computatorium.*] The name of two prisons formerly existing in London, the Poultry Counter, (q. v.) and Wood-street Counter, for the use of the city, to confine debtors, peace-breakers, &c. *Cowell. Whishaw. Tomlins.* Sometimes called *compter*, (q. v.)

COUNTER AFFIDAVIT. In practice. An affidavit in opposition, or contradictory to another affidavit; an affidavit made by a party against whom a motion or application is made to a court or judge on affidavit, for the purpose of defeating such motion or application. 1 *Tidd's Pr.* 189. 1 *Burr. Pr.* 344.

COUNTER BOND. In old practice. A bond of indemnity. 2 *Leon.* 90.

COUNTERFEIT. [L. Fr. *contrefait, conterfet*, from *contre*, against, and *fait*, made; L. Lat. *controfactum, contra*, against, and *factum*, made.] That which is made in imitation of something, but without lawful authority, or contrary to law; and with a view to defraud, by passing the false for the true.* *Wharton's Lex.* Anciently applied to the forging of the great or privy seal. 4 *Bl. Com.* 83.

COUNTERFEITING. See *Forgery.*

COUNTER LETTER. In the civil law. An instrument in writing, executed by the lender of money to whom property has been conveyed by an absolute deed as security, by which he agrees, on payment of a certain sum, to re-convey the same property to the borrower. 11 *Peters' R.* 351, 354, arg. Wayne, J. *Id.* 386. Both instruments constitute, by the law of Louisiana, that kind of contract denominated an *antichresis*, (q. v.) *Id.* 388.

COUNTERMAND. [L. Lat. *contramandatum*, from *contramandare*, q. v.] In practice. A new or opposite direction; an order made contrary to a former one, for the purpose of avoiding or suspending it; the revocation of a thing before done, or directed to be done. Thus, a notice of trial or other intended proceeding in a cause, and a writ issued to a sheriff, may be countermanded by the attorney who gave or issued it, by a new notice to that effect.

This term was formerly applied to wills, leases, &c. in the sense of revocation. *Termes de la Ley.* 4 Co. 60, 61. *Cowell.*

COUNTERPART. In conveyancing. The corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the original, and the rest are *counterparts*; although where all the parties execute every part, this renders them all originals. 2 *Bl. Com.* 296. *Shep. Touch.* (by Preston,) 50. See *Duplicate*.

The term *counterpart* seems derived from the ancient practice of executing indentures and chirographs, by writing them twice on the same sheet of parchment, beginning from a space in the middle, (where it was afterwards divided by cutting through); the parts, when thus written, lying opposite or *counter* to each other. See *Chirograph*, *Indenture*.

COUNTERPLEA. [L. Lat. *contraplacitum*.] In pleading. A plea of an incidental kind, and now of rare occurrence, diverging from the main series of the allegations in a cause. As where a party demandsoyer, if his adversary has any matter of fact to allege as a ground why theoyer cannot be demanded, he may plead such matter, and the allegation is called a counterplea to theoyer. *Steph. Pl.* 72. Counterpleas in the old actions were a kind of replication, and were used particularly as answers to aid prayer. *Termes de la Ley. Reg. Plac.* 118. *Oro. Car.* 263. See *Pleading*.

COUNTER-ROLL. [L. Fr. *contreroule*, *conterrolle*; L. Lat. *contra rotulus*.] In old English law and practice. A roll kept by an officer as a check upon another officer's roll.* Sheriffs and coroners were anciently required to keep rolls or records of what was done before them. *Bract.* fol. 121 b, 140 b. *Britt.* c. 1. *Le vicont eit conterrolles ove les coroners auxy bien des appels come des enquests*, &c.; the sheriff shall have counter-rolls with the coroners, as well of appeals as of inquests, &c. *Stat. Westm.* 1, c. 10.

COUNTEZ. L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given, in his time, in good English, "*count these*." 4 *Bl. Com.* 340, note (n).

COUNTIE. L. Fr. Earl. *Yearb. T.* 5 Edw. III. 28.

COUNTOR, Counter, Countour. L. Fr. and Eng. [L. Fr. *contour*, from *countier* or *conter*, to relate, recite or state orally; L. Lat. *narrator*.] In old English practice. An advocate or professional pleader; one who *counted* for his client, that is, related his case, recited his count, or orally pleaded his cause.* See *To count*. A term applied in the old books to serjeants at law, who are sometimes termed *serjeant countors*. 2 *Inst.* 214. 2 *Reeves' Hist. Eng. Law*, 284, 285. 1 *Bl. Com.* 24, note (t). *Countors sont serjeants sachents la ley del royaume, que servent al common del peuple à prononcier et defendre les actions en jugement*; countors are serjeants learned in the law of the realm, who serve the common people to prosecute and defend actions in court. *Mirr.* c. 2, sect. 5. 9 Co. pref. *Stat. Mod. Lev. Fines. Conseillers ou countors.* *Britt.* c. 52. See *Narrator*.

* * The *banci narratores* (countors of the bench) mentioned by Matthew Paris (*Hist.* p. 1077,) appear to have been serjeants of the Common Pleas; serjeants having always had the exclusive privilege of practising in that court, which was anciently termed "the Bench." *Steph. Pl.* Appendix, Note (8). 1 *Bl. Com.* ub. sup. See *Bench*, *Bancus*, *Serjeant at law*, *Narrator*. That *counting* was the peculiar province of serjeants, is shown by the fact of its having so long survived as one of the ceremonies observed on taking that degree. See *To count*.

The word *countour* occurs in Chaucer's description of the Frankelein:—

A shereve hadde he ben, and a countour,
Was no wher swiche a worthy vavasour.

Some copies, according to Selden, have *coronour* in this passage instead of *countour*, and *coronour* is preferred by the author of the note on 2 *Bl. Com.* 347, for the singular reason that the office of an *accountant* was inconsistent with the character.

COUNTRE. L. Fr. [Lat. *contra*.] Against; in opposition to. *Countre les pointz des chartres.* *Conf. Chart.* 25 Edw. I.

COUNTREFAIRE. L. Fr. To counterfeit. *Britt.* c. 4.

COUNTERROULER. L. Fr. A controller. *Britt.* c. 1.

COUNTREVAL. L. Fr. Descending. *Kelham*.

COUNTRY. [L. Lat. *patria*; L. Fr.

pais.] In pleading and practice. The inhabitants of a district from which a jury is summoned in a cause.* "To make a certain jury of the *country*," were words of the old writ of *venire facias*.

A jury, summoned, or to be summoned. In pleading, a defendant "puts himself upon the country," (*ponit se super patriam*), i. e. refers the trial of his cause to a jury. A "conclusion to the country" is an offer of trial by jury. 3 *Bl. Com.* 315. 3 *Steph. Com.* 589. *Steph. Pl.* 73, 78, 230, 237.

COUNTY. [L. Fr. *counte*; L. Lat. *comitatus*.] A civil division of a state or kingdom, for political and judicial purposes, formerly governed in England by the earl or count, from whom it derived its name. *Termes de la Ley.* 1 *Bl. Com.* 113, 116. *Crabb's Hist. Eng. Law*, 16. *Co. Litt.* 109 b. It is the same with *shire*, (*scyre*), which was the corresponding term in Saxon. 1 *Bl. Com.* 116. The county court was sometimes anciently termed the *county*. *Termes de la Ley.* *Mirr.* c. 1, sect. 15. 9 *Co. prof.* See *United States Digest*, County.

COUNTY CORPORATE. A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county: such as London, York, Bristol, Norwich, and other cities in England. 1 *Bl. Com.* 120.

COUNTY COURT. [L. Lat. *curia comitatûs*, or *comitatus*; L. Fr. *counte*.] A court of high antiquity in England, incident to the jurisdiction of the sheriff. 2 *Bl. Com.* 35. 3 *Steph. Com.* 395. 4 *Co.* 33. 1 *Reeves' Hist. Eng. Law*, 7. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. 3 *Bl. Com.* 35. The freeholders of the county (anciently termed the *suitors* of the court) are the real judges in this court, and the sheriff is the ministerial officer. *Id.* 36. 1 *Reeves' Hist.* 7. This was formerly a court of great dignity and splendor, but is now fallen to an inferior rank; and even as an ordinary court, the resort to it, owing probably to the introduction of courts of request, is not very frequent.* 3 *Steph. Com.* 396. See *Com. Dig.* County courts, B. 3. *Bac. Abr.* County court.

In the United States, county courts are courts of record of inferior jurisdiction, and held by judges expressly appointed or chosen for the purpose. *Encyc. Americ.* See *United States Digest*, Courts.

COUNTY PALATINE. [L. Lat. *comi-*

tatus palatinus; L. Fr. *county paleis* or *palais*.] A county in England distinguished by peculiar privileges; and so called from *palatium*, (a palace,) because its owner, whether duke or earl, had in such county royal prerogatives, (*jura regalia*), as fully as the king had in his palace. 4 *Inst.* 205, 211, 216. There were originally three of these, Chester, Durham and Lancaster, but they are all now in the hands of the crown. *Id. ibid.* 1 *Bl. Com.* 116—119. 1 *Steph. Com.* 120, 121. *Sewell's Law of Sheriff*, 1. 1 *Crabb's Real Prop.* 489, § 630.

COUNTY SESSIONS, in England, are the general quarter sessions of the peace for each county, which are held four times a year. *Wharton's Lex.* *Warren's Law Studies*, 367.

COUPE. L. Fr. Fault; blame. *Britt.* c. 28, 100. *Coupable*; guilty. *Kelham. L. Fr. Dict.*

COUPER. L. Fr. To cut. *Coupes*; cut. *Dyer*, 35 b, (Fr. ed.) *Coupamus*; we cut. *Yearb.* M. 8 Edw. III. 2. *Coupastes*; you cut. *Id. ibid.*

COURE, *Courree*, *Courge*. L. Fr. To run. *Kelham.* *Courge*; runs. *Courge la distresse*; the distress runs or goes. *Britt.* c. 88.

COURS. L. Fr. Course; practice. (Lat. *cursus*.) *Ceo est un common cours quand*, &c. *Yearb.* H. 8 Hen. VI. 21.

COURT. L. Fr. and Eng. [L. Lat. *curia*, *curtis*, *placitum*, *judicium*.] A tribunal established for the public administration of justice, (*forum judiciale vel juridicum*); and composed of one or more judges, who sit for that purpose at certain fixed times and places, attended by proper officers.* *Spelman*, voc. *Curia*. See *infra*.

A place where justice is judicially administered. *Co. Litt.* 58. 3 *Bl. Com.* 23. —The place or tribunal wherein judges exercise their power.* *Hale's Anal.* sect. xi. —The place where judges are set to do justice.* *Finch's Law*, b. 4, ch. 1.

The persons of the judges so sitting for the administration of justice.* *Finch's Law*, *ub. sup.*

* * The definition of Lord Coke, which makes a court to be merely a *place* of justice, though sufficiently expressive of the original meaning of the term, (see *infra*), fails obviously to convey its full modern signification. A *place* of meeting, indeed, is of the essence of a court, but *persons* also enter largely into its composition. Accordingly, it is well observed by Sir

William Blackstone, that in every court there must be at least three constituent parts, the *actor*, *reus*, and *judez*; the *actor*, or plaintiff, who complains of an injury done; the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judez*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain and by its officers to apply the remedy. 3 *Bl. Com.* 25. A court may be more particularly described as an organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this its proper business, by its proper officers, viz. attorneys and counsel, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings.* See *Skene de Verb. Signif.* voc. *Curia*.

The term *court* is obviously of Norman origin, being borrowed without change from the French of the middle ages. *Spelman*, voc. *Curia*. *Le haute court*; the high or supreme court. *Assises de Jerusalem*, c. ix. It seems to be derived from the L. Latin *curtis* of an earlier period, which, like *curia*, (the ordinary Latin form of the word,) denoted primarily the hall or palace of a sovereign or lord; and derivatively, (as that was the usual *place* of administering justice,) a court, in the modern sense. See *Curia*, *Curtis*.

COURT. [Lat. *curia*.] A legislative assembly. Parliament is called in the old books a court of the king, nobility and commons assembled. *Finch's Law*, b. 4, ch. 1, p. 233. *Fleta*, lib. 2, c. 2.

The term has been applied in the same sense to legislative bodies in the United States, as in Massachusetts.

COURT OF ADMIRALTY. See *Admiralty*.

COURT OF ARCHES. See *Arches*.

COURTS OF ASSIZE AND NISI PRIUS. Courts in England, composed of two or more commissioners, called judges of assize, (or of assize and *nisi prius*,) who are twice in every year sent by the queen's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of Westminster Hall. 3 *Steph.*

Com. 421, 422. 3 *Bl. Com.* 57. See *Assize*, *Nisi Prius*, *Justices of assize*.

COURT OF ATTACHMENTS. See *Attachments*.

COURT BARON. [L. Lat. *curia baronis*.] An inferior court of civil jurisdiction in England, attached to a manor, being an inseparable incident thereto, and holden by the steward within the manor. 3 *Bl. Com.* 33. 1 *Reeves' Hist. Eng. Law*, 7. 9 *Co. pref.* See *Manor*. It is of two natures; the *court baron* proper, and *customary court*. The former is a court of common law, not of record, and is held before the freeholders who owe suit and service to the manor, such suitors being the judges of the court, the steward acting rather as registrar. 3 *Bl. Com.* 33. 3 *Steph. Com.* 393. 1 *Crabb's Real Prop.* 490, 491, § 631. The most important business of this court formerly was to determine, by writ of right, all controversies relating to the right of lands within the manor; and it may still hold plea of any personal actions of debt, trespass on the case, or the like, where the debt or damages do not amount to forty shillings. 3 *Bl. Com.* 33. 1 *Crabb's Real Prop.* 491—493, §§ 631—634. 3 *Steph. Com.* 393. This court, however, is now fallen into almost entire disuse. *Id.* 394.

The *customary court* is that which appertains entirely to the *copyholders*, in which their estates are transferred by surrender and admittance, and other matters transacted relative to these tenures only. 3 *Bl. Com.* 33. *Co. Litt.* 58 a. The steward is the judge of this court, the suitors acting merely as his assistants. The copyholders attending to their fealty at this court are called the *homage*. 1 *Crabb's Real Prop.* 494, § 635. See *Homage*.

The court baron is supposed by some to be so called, as being the *court* of the *barons*, (*curia baronum*,) or freeholders; *baron* having formerly had the sense of freeholder or freeman. *Co. Litt.* 58 a. 3 *Bl. Com.* 33. *Fleta* expressly calls it by that name. Lib. 2, c. 53. *Id.* c. 65, § 9. But the more obvious explanation seems to be that it is the *court* of the *baron* (*curia baronis*,) or lord of the manor, manors being formerly called *baronies*, and their lords *barons*. 4 *Inst.* 268. 2 *Bl. Com.* 90. *Cowell*. The expression *curia domini*, used by *Fleta*, seems to indicate this. Lib. 2, c. 53, § 4.

The old manors in the province of New-

York had their courts baron and courts leet. See Charters in *Bolton's Hist. of Westchester*.

COURT OF CHANCERY. See *Chancery*.

COURT OF CHIVALRY. A court formerly held before the lord high constable and earl marshal of England jointly, and afterwards before the latter only, having cognizance of contracts and other matters touching deeds of arms and war, as well out of the realm as within it. 4 *Inst.* 123. 3 *Bl. Com.* 68, 103, 105. It has grown out of use. *Id. ibid.* 4 *Steph. Com.* 329.

COURTS CHRISTIAN. [*L. Lat. curia christianitatis.*] The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 *Bl. Com.* 83. 3 *Id.* 64. 3 *Steph. Com.* 430. 2 *Inst.* 488. *Cowell.* See *Ecclesiastical courts*.

COURTS OF CONSCIENCE. See *Conscience*.

COURT OF COMMON PLEAS. See *Common Pleas*.

COURT OF COMMISSIONERS OF SEWERS. See *Commissioners of sewers*.

COURT OF DELEGATES. The great court of appeal in England in all ecclesiastical causes, consisting of delegates (*judices delegati*), appointed by the king's commission, under his great seal, and issuing out of chancery, to represent his royal person, and hear all appeals to him made by virtue of the statute 25 Henry VIII. c. 19. 3 *Bl. Com.* 66. The judicial committee of the privy council is now substituted for this court. *Stat.* 2 & 3 *Will.* IV. c. 92; 3 & 4 *Will.* IV. c. 41, s. 3; 6 & 7 *Vict.* c. 38. 3 *Steph. Com.* 432, 434.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. The name of a new court established in England by statute 20 & 21 *Vict.* c. 85, (Aug. 28, 1857,) and to which has been transferred all the jurisdiction of the ecclesiastical courts in respect of divorces *à mensa et thoro*, suits of nullity of marriage, suits for restitution of conjugal rights, and in all causes and matters matrimonial. § 6. The judges of this court are the Lord Chancellor, the judges of the courts of Queen's Bench, Common Pleas and Exchequer, and the judge of the Court of Probate, (q. v.) who is called judge ordinary. § 9.

COURT OF THE DUCHY OF LANCASTER. A court of special jurisdic-

tion, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 *Bl. Com.* 78. 3 *Steph. Com.* 446.

COURTS ECCLESIASTICAL. See *Ecclesiastical courts*.

COURT OF EQUITY. See *Equity, Chancery*.

COURT OF EXCHEQUER. See *Exchequer*.

COURT HAND. In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability. Sir James Burrow, speaking of the statute 4 Geo. II. c. 26, thus forcibly contrasts this style of writing with that by which it was superseded: "A statute now took place for converting them [common law pleadings] from a fixed dead language to a fluctuating living one; and for altering the strong, solid, compact hand, (calculated to last for ages,) wherein they were used to be written, into a species of handwriting so weak, flimsy and diffuse, that many a modern record will hardly outlive its writer, and few perhaps will survive much above a century." 1 *Burr.* pref. iv. Sir William Blackstone mentions another disadvantage attending the disuse of the old hand, "whereby the reading of any record that is fifty years old is now become the object of science, and calls for the help of an antiquarian." 3 *Bl. Com.* 323.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of *clerkship*, as it was called. Two sizes of it were employed, a large and a small hand; the former, called *great court hand*, being used for initial words or clauses, the *placita* of records, &c. *Towns. Pl. passim. Instr. Cler. passim.* See *Record*.

COURT OF HUSTINGS. The county court of London, held before the mayor, recorder and sheriff, but of which the recorder is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 *Steph. Com.* 449, note (1). See *Hustings*.

COURT OF JUSTICIARY. In Scotch law. The supreme criminal tribunal of Scotland. 2 *Alison's Crim. Pract.* 1.

COURT OF KING'S BENCH. See *King's Bench*.

COURT LEET. [L. Lat. *curia leet*; the court of the leet.] A court of record in England, held once or twice in every year within a particular hundred, lordship, or manor, before the steward of the leet, for the preservation of the peace, and the punishment of all trivial misdemeanors. Its original intent was to view the frankpledges, that is, the freemen of the liberty who anciently were all mutually pledges for the good behavior of each other; and hence it was called, by the Anglo-Normans, the view of frank pledge, (*visus franci plegis*). 4 *Bl. Com.* 273. *Spelman*, voc. *Leta*. 4 *Inst.* 261. *Mirr.* c. 1, § 10. 2 *Hawk. P. C.* 72. 1 *Crabb's Real Prop.* 495, § 637, *et seq.* *Tomlins*. It has, however, latterly fallen into almost total desuetude, its business having, for the most part, gradually devolved upon the quarter sessions. 4 *Steph. Com.* 340. See *Leet*, *Frank pledge*, *View of frank pledge*.

COURT OF MARSHALSEA. See *Marshalsea*.

COURT MARTIAL. A court held in the military and naval service, for the trial and punishment of offences against the regulations of the service.* 1 *Bl. Com.* 415. *Crabb's Hist. Eng. Law*, 553. The court of the constable and marshal was the earliest military or martial court in England, but courts martial, in their present form, do not appear to have been introduced before the reign of James II. *Id. ibid.* *Hale's Hist. Com. Law*, ch. 2.

COURT OF PECULIARS. A spiritual court in England, being a branch of, and annexed to the Court of Arches. "It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions, are originally cognizable by this court, from which an appeal lies to the Court of Arches. 3 *Steph. Com.* 481. 4 *Reeves' Hist. Eng. Law*, 104.

COURT OF PIEDPOUDRE, PIEPOWDERS, or PYPOWDERS. [L. Lat. *curia pedis pulverizati*.] A court of record in England, incident to every fair and market, of which the steward of him who owns

or has the toll of the market, is the judge. 6 *Co.* 12. 9 *Id.* pref. Its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined within the compass of one and the same day, unless the fair continues longer. It has cognizance of all matters of contract that can possibly arise within the precincts of that fair or market, and from it a writ of error lies, in the nature of an appeal to the courts at Westminster. 3 *Bl. Com.* 32, 33. It is the lowest, and at the same time the most expeditious court of justice known to the law of England, but has fallen into disuse, and is now in a manner forgotten. *Id. ibid.* 3 *Steph. Com.* 438. These courts do not seem to have been exclusively peculiar to fairs and markets, as they might be held by custom in cities, boroughs, and villas, for the collection of debts, &c. *Cro. Jac.* 313. *Cro. Car.* 46. 2 *Salk.* 604.

* * The derivation of the word *pedpoudre*, (from Fr. *ped*, a foot, and *poudre*, dust,) seems obvious enough, though, as to the reason of its application to this kind of court, there are different opinions. By some it is supposed to have been so called from the *dusty feet* of the suitors, the court being most usually held in summer. *Cowell. Blount*. By others, from the expedition of its proceedings, justice being done as speedily as dust can fall from the foot. 4 *Inst.* 272. Others have supposed it to mean the court of petty chapmen, (from O. Fr. *ped poldreux*, Lat. *pede pulverosus*, a pedlar, or travelling merchant,) who usually resorted to fairs or markets. 3 *Bl. Com.* 32. *Barrington on the Statutes*, 327, [423.] *Skene de Verb. Signif.* voc. *Pede pulverosus*. This last supposition seems confirmed by Bracton's use of the term *pepoudrous* to denote that kind of speedy justice which persons of this description were entitled to; (*quibus exhibetur justitia pepoudrous*). *Bract.* fol. 334. *Blount* considers this to have been the same with that kind of court called, among the Saxons, *ceaping gemot*. See *Piedpoudre*, *Faradman*, *Pede pulverosus*.

COURT OF POLICIES OF ASSURANCE. A court established by statute 43 *Eliz.* c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance. *Crabb's Hist. Eng. Law*, 508.

COURT OF PROBATE. The name of a new court established in England, by statute 20 & 21 Vict. c. 77, §§ 3, 4, (Aug. 25, 1857); and to which the testamentary jurisdiction of ecclesiastical and other courts has been transferred.

COURT OF QUEEN'S BENCH. See *Queen's Bench*.

COURT OF RECORD. A court where the acts and judicial proceedings are enrolled in parchment [or paper] for a perpetual memorial and testimony; and which has power to fine and imprison for contempt of its authority.* 3 *Steph. Com.* 383. 3 *Bl. Com.* 24. 1 *Wooddes. Lect.* 59, 60. Called in law French, *court que porte record*; a court which bears record. *Britt. c.* 68. See *Record*.

Courts *not of record* are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 *Steph. Com.* 384.

COURT OF REGARDS. One of the forest courts, held every third year for the lawing or expeditation of dogs. 3 *Bl. Com.* 72. *Crabb's Hist. Eng. Law*, 155. See *Expeditation*.

COURT OF REQUESTS. A court, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts. The ordinary constitution of these courts, which are generally for causes of debt to the amount of 40s. only, but often to the amount of 5l., is to examine in a summary way, and without jury, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good conscience. 3 *Steph. Com.* 451, and statutes there cited. 3 *Bl. Com.* 81, 82.

COURT OF STAR CHAMBER. [L. *lat. curia camera stellata*.] A court of very ancient original in England, but new modelled by statutes 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20; having jurisdiction over riots, perjuries, misbehaviour of sheriffs, and other notorious misdemeanours, which were tried without the intervention of a jury. After having greatly abused its powers, it was abolished by statute 16 Car. I. c. 10. 4 *Bl. Com.* 266, 267. *Lamb. Archaion.* 158. 4 *Reeves' Hist. Eng. Law*, 146. See *Star Chamber*.

COURT OF THE STEWARD AND MARSHAL. A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of

all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the *verge*. *Crabb's Hist. Eng. Law*, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 *Reeves' Hist. Eng. Law*, 235, 247. This court had the same origin with the King's Bench, being like it an emanation from the *curia regis*, and obliged to attend the king *ubicunque fuerit in Anglia*. *Crabb's Hist.* 415. The steward was the judge of this court, and the marshal the ministerial officer.* *Id.* 185. 2 *Reeves' Hist.* 235, 247, 249, 420.

COURT OF WARDS AND LIVERIES. A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by stat. 32 Hen. VIII. c. 46, called *the court of the King's Wards*. To this was annexed, by stat. 33 Hen. VIII. c. 22, *the court of Liveries*; so that it then became the court of *Wards and Liveries*. 4 *Reeves' Hist. Eng. Law*, 258. This court was not only for the management of *wards*, properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. *Id.* 259. It was abolished by statute 12 Car. II. c. 24. *Crabb's Hist. Eng. Law*, 468. *Blount, voc. Wards and Liveries*.

COURT LANDS. [L. *lat. curtiles terræ*.] In English law. Demains, or lands kept in demesne, i. e. in the lord's own hands, to serve his family. A term derived from the feudal law in which *terra curtiles*, or *intra curtem*, signified lands appropriate to the court (*curtis*), or house of the lord. *Spelman, Feuds*, c. 5. The same with what was called by the Saxons *inland*, being that which lay most convenient for the lord's mansion house, and therefore kept by the lords in their own hands, for the support of their family and for hospitality. The Normans called these lands *terræ dominicales*, the demains, or lord's lands. *Cowell, vocc. Court lands, Curtiles terræ*. See *Court, Curtis, Demesne*.

COUSIN. [Fr. *coûsin*; L. *lat. consanguineus*.] A kinsman or blood relation. Applied in the old books to a brother, sister, or uncle. *Litt. sect.* 108, 123, 389. *Co. Litt.* 80 b, 81 b. Cousin and heir (abbreviated *cous. et hæ.*) is an expression

of frequent occurrence. *Dyer*, 79 a. *Hubback's Evid. of Success.* 586. In Devonshire, the word is still used to signify a nephew. 1 *Vesey, Jr.* 73. *Hubback*, 427, note.

COUSINAGE. See *Cosinage*.

COUST. L. Fr. Cost; charge. *Kelham*.

COUSTOUMIER, *Costumier*, *Coutumier*. Fr. A collection of customs, usages and forms of proceeding in the old law of France. The most celebrated of these were the *Coutumier* of France, called the *Grand Coutumier*, and the *Coutumier de Normandie*, or *Grand Coustumier de Normandie*. *Crabb's Hist. Eng. Law*, 69. *Butler's Note*, 77, lib. 3, *Co. Litt.* *Butler's Hor. Jur.* 89—92. See *Grand Coutumier*.

COUSTUM, *Coutum*. L. Fr. [from *coust*, price, charge.] Toll or tribute. 1 *Bl. Com.* 314, note.

COUTHUTLAUGH. Sax. [from *couth*, knowing, and *utlaugh*, an outlaw.] In Saxon and early English law. A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offence he was anciently subject to the same punishment as the outlaw himself. *Bract.* fol. 128 b. *Spelman*.

COUVREFEU. L. Fr. Curfew. *Kelham*. See *Curfew*.

COVENABLE. L. Fr. and Eng. [Lat. *rationabilis*.] Convenient; becoming; fit or suitable. *Stat. Westm.* 1, pr. *Stat.* 4 *Hen.* VIII. c. 12. Also written *convenable*. *Stat.* 27 *Edw.* III. st. 2, c. 17. *Cowell*.

COVENANT. [from L. Fr. *convenant*, from *convenir*, to agree; L. Lat. *conventio*.] In conveyancing. The agreement or consent of two or more by deed in writing, sealed and delivered, whereby either or one of the parties promises to the other that something is done, or shall be done. *Shep. Touch.* 160. *Termes de la Ley.* *Plowd.* 308.—A promise by deed. 2 *Steph. Com.* 108.—A species of express contract contained in a deed, to do a direct act, or to omit one. 3 *Bl. Com.* 155.

This term is not usually employed as descriptive of any particular kind of deed, but is applied to those clauses of agreement contained in any instrument under seal, as a deed, lease, &c., whereby either party stipulates for the truth of certain facts, or binds himself to perform or give something to the other.* 2 *Bl. Com.* 304. As a covenant by a grantor that he has a right to convey, that the grantee shall have quiet

possession; and by a lessee that he will pay the rent, keep the premises in repair, &c. *Id. ibid.* 2 *Hilliard's Real Prop.* 372, *et seq.*

COVENANT IN LAW, or *Implied covenant*. A covenant implied by law from certain words in a deed which do not express it. 1 *Archb. Nisi Prius*, 350. Thus, from the words *concessi* (have granted) or *demisi* (have demised) in a lease, a covenant for quiet enjoyment may be implied. *Spencer's case*, 5 *Co.* 16. *Shep. Touch.* 160. *Termes de la Ley.* 1 *Man. & Gr.* 195. 1 *Steph. Com.* 455, note (g). So, from the word *grant* in an assignment, the like covenant may be implied. *Carth.* 98. 9 *Ad. & El.* 532. In New-York, no covenant can be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. 1 *Rev. St.* [738,] 731, § 140. And see 2 *Hilliard's Real Prop.* 365—367.

COVENANT IN DEED, called also *Covenant in fact*, (Fr. *covenant en fait*), and *covenant expressed*. A covenant expressed in words, or inserted in a deed in specific terms.* *Termes de la Ley.* *Shep. Touch.* 160. There is no set form of words necessary to constitute a covenant; the usual form is, that the covenantor, "for himself, his heirs, executors and administrators, covenantants, promises and agrees to and with [the covenantee,] his heirs, executors, administrators and assigns, that," &c. 1 *Archb. Nisi Prius*, 250. *United States Digest*, Covenant. The formal word "*covenant*" itself is not absolutely essential for this purpose. *Bouvier*, voc. *Covenant*, pl. 10, and cases there cited. *Hilliard's Real Prop.* 364.

COVENANT INHERENT. A covenant which is conversant about the land, and knit to the estate in the land; as that the thing demised shall be quietly enjoyed, shall be kept in reparations, shall not be aliened, &c. *Shep. Touch.* (by Preston,) 161.

COVENANT COLLATERAL. A covenant which is conversant about some collateral thing that doth nothing at all, or not so immediately concern the thing granted; as to pay a sum of money in gross, &c. *Shep. Touch.* 161.

COVENANT REAL. A covenant in a deed binding the heirs of the covenantor, and passing to assignees, or to the purchaser. 2 *Bl. Com.* 304. 4 *Kent's Com.* 471, 472. A covenant which runs in the

reality so with the land, that he that hath the one, hath or is subject to the other. *Shep. Touch.* 161. It is thus distinguished from a *personal* covenant, which affects only the covenantor, and the assets in the hands of his representatives after his death. 4 *Kent's Com.* 470. The covenants in a deed that the grantor is lawfully seised, and has good right to convey, and that the land is free from incumbrance, are *personal* covenants, not running with the land; the covenant for quiet enjoyment, and the covenant of warranty, are in the nature of *real* covenants. 4 *Id.* 471. But see *Id.* 472, and notes. 1 *Sumner's R.* 263.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. *Termes de la Ley.* 3 *Bl. Com.* 156.

COVENANT RUNNING WITH LAND. A covenant which goes with the land, [conveyed by the deed in which it is expressed,] as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 *Kent's Com.* 472, note.—A covenant is said to run with the land, when not only the original parties [to the deed of conveyance] or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable, (as the case may be,) to its obligation. 1 *Steph. Com.* 455, and note (r). *Burton's Real Prop.* 157. Or, in other words, it is so called when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land. 1 *Smith's Leading Cases*, 27, note. *Spencer's case*, 5 Co. 16 a. 4 *Kent's Com.* 470—473. See 17 *Wendell's R.* 136. *United States Digest*, Covenant.

A covenant to pay rent, to produce title deeds, or for renewal, are covenants which run with the land. All covenants concerning title run with the land, with the exception of those that are broken before the land passes. 4 *Kent's Com.* 473.

COVENANT TO STAND SEISED TO USES. A species of conveyance by which a man seised of lands covenants, in consideration of blood or marriage, that he will *stand seised* to the use of his child, wife, or kinsman, for life, in tail or in fee. 2 *Chitty's Bl. Com.* 338, and notes. On executing this conveyance, the other party becomes seised of the use of the land, and the statute of uses immediately operates, and annexes the possession to the use. See

Use, Seisin to a use. This conveyance has the same force and effect as a common deed of bargain and sale; but the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 4 *Kent's Com.* 492, 493. It is said to be no longer in use in England. 1 *Steph. Com.* 491, 492. *Id.* 333. But it is not unknown in practice in this country. 16 *Johns. R.* 515. 3 *New-Hamp. R.* 239. See 2 *Hilliard's Real Prop.* 312, *et seq.*

COVENANT. In practice. The name of a writ, or action (*L. Lat. breve de conventionione*;) that anciently lay for non-performance of any covenant in writing. *Reg. Orig.* 165—167. *F. N. B.* 145. It might be brought for the recovery of land, or any thing issuing out of lands, or of moveables. *Crabb's Hist. Eng. Law*, 214, 290. According to Mr. Reeves, it was first given by the statute of Wales, (*statutum Wallie*;) and he says that no forms of it are mentioned by Bracton or Fleta. 2 *Reeves' Hist. Eng. Law*, 262. Such a writ, however, is clearly mentioned by Bracton in more than one passage. *Si quis a conventionione recedat, succurritur alteri parti per actionem de conventionione*; if any one withdraw from [refuse to perform] his covenant, the other party has a remedy by an *action of covenant*. *Bract.* fol. 34. *Per breve de conventionione.* *Id.* fol. 220. *Crabb's Hist. Eng. Law*, 214, 290. 3 *Bl. Com.* 156.

COVENANT. In practice. The name of one of the modern forms of actions *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal. 1 *Archb. Nisi Prius*, 250. *Browne on Actions*, 352. 1 *Chitt. Pl.* 115.

COVENANTOR. The party who makes a covenant. *Shep. Touch.* 160.

COVENANTEE. The party to whom a covenant is made. *Shep. Touch.* 160.

COVENANTS DEPENDENT and INDEPENDENT. See *Dependent covenants*, *Independent covenants*.

COVENT. Used in the old books for *convent*. *Litt. sect.* 133. *Co. Litt.* 94 a, b. *Dyer*, 73, (Fr. ed.) *Cowell*. The omission of the letter *n* after the vowel *o*, was a very common mode of contraction both in Latin and French; as *coventus* for *conventus*; *covenable* for *convenable*. Hence the English word *covenant* for the Fr. *convenant*. See *Contraction*.

COVENTRY ACT. The English statute 22 & 23 Car. II. c. 1, enacted for the punishment of the offence of cutting off or disabling a limb or member, with intent to maim or disfigure. It was so called from being occasioned by an assault on Sir John Coventry in the street. 4 *Bl. Com.* 207. *Crabb's Hist. Eng. Law*, 528. This, with other statutes on the same subject, is now repealed by 7 & 8 Geo. IV. c. 27, and 9 Geo. IV. c. 31, which latter act is itself repealed, as far as its provisions relate to this subject, by 7 Will. IV. and 1 Vict. c. 85. 4 *Steph. Com.* 126, note.

COVERT. Fr. and Eng. [Fr. *couvert*, from *couvrir*, to cover; L. Lat. *co-opertus*.] Covered; protected; sheltered. A *pound covert* is one that is close or covered over, as distinguished from *pound overt*, which is open overhead. *Co. Litt.* 47 b. 3 *Bl. Com.* 12. A thicket or other shelter (*latibulum*) for wild animals in a forest, is called a *covert*, (*co-opertum*, q. v.) *Spelman*. 16 *M. & W.* 569. A *feme covert* is so called, as being under the wing, protection or cover of her husband. 1 *Bl. Com.* 442. *Covert d'un A.*; covert of one A. *Yearb. H.* 5 Edw. III. 37. See *Feme covert*, *Overt*. In the old colony laws of New Plymouth, children are said to be "under the covert" of their parents. *Laws of Col. N. Plymouth*, Nov. 15, 1636.

COVERT BARON, or COVERT DE BARON. L. Fr. [L. Lat. *viro co-operta*.] Under the protection of a husband; married. 1 *Bl. Com.* 442. *La feme que est covert de baron*; the woman which is covert of a husband. *Litt.* sect. 670. See *Baron, Baron & Feme*.

COVERTURE. [from *covert*, q. v.] A covering; a state of being covered or protected; or, according to Lord Coke, a state of subjection or dependence. *Co. Litt.* 112 a. The condition of a woman during marriage is so called. 1 *Bl. Com.* 442. 2 *Steph. Com.* 298. *Cowell*.

COVIN. [L. Lat. *covina*.] A secret assent or agreement determined in the hearts of two or more, to the prejudice of another. Mountague, C. J. *Plowd.* 54. *Termes de la Ley. Co. Litt.* 357 b. *Finch's Law*, b. 1, c. 3, num. 64.

COVINOUS. Deceitful; fraudulent.

CRAIERA. L. Lat. In old records. A vessel of lading or burden; a hoy or smack. *Pat.* 2 Ric. II. *Cowell*. See *Craier*.

CRAIRE. See *Creier*.

CRANAGE. [L. Lat. *cranagium*.] In English law. A liberty to use a crane for drawing up wares or goods out of any vessel at any creek or wharf, and to make profit of it. *Termes de la Ley. Hale de Jur. Mar.* pars 2, c. 6. *Cowell*.

The money taken for such work. *Id.*

CRAPPA. L. Lat. In old English law. A crop. *Fleta*, lib. 2, c. 82, § 2. See *Croppa*.

CRASPICE. See *Crassus*.

CRASSUS, Crassa. Lat. [Fr. *grosse*.] Large; gross. *Crassus piscis*; (*craspice*;) large fish. *Bract.* fol. 55 b. Called in another place, *grossus piscis*; *sicut balana, sturgio et alii pisces regales*; (the whale, sturgeon and other royal fish). *Id.* fol. 14, 120. These were called *royal fish*, as belonging to the king, when either thrown ashore, or caught near the coast. 1 *Bl. Com.* 290.

Gross; excessive; extreme. *Crassa ignorantia*; gross ignorance. *Fleta*, lib. 5, c. 22, § 18. Lord Ellenborough, 8 *East*, 348. *Crassa negligentia*; gross negligence. 4 *Bell's Appeal Cases*, 57, 58. Called by Lord Brougham, "crass negligence." *Id.* 58.

CRASTINUM. Lat. [from *cras*, to-morrow.] The morrow; the day after. See *Crastino*.

CRASTINO. L. Lat. In old English practice. On the morrow. A title formerly given to the return days of writs, days in bank, or appearance days in the courts at Westminster. 3 *Bl. Com.* 277. 2 *Reeves' Hist. Eng. Law*, 56, 57.

Crastino animarum; (on the morrow of All Souls;) one of the return days in Michaelmas Term, and the first day of the term. *Crastino purificationis beate Mariae virginis*; (on the morrow of the purification of the blessed virgin Mary;) one of the return days in Hilary term. *Crastino ascensionis Domini*; (on the morrow of the Ascension;) one of the return days in Easter term. *Crastino sancte Trinitatis*; (on the morrow of the holy Trinity;) one of the return days in Trinity term; and the first day of the term. 2 *Reeves' Hist. ub. sup.* 1 *Tidd's Pract.* 106. See *Fleta*, lib. 2, c. 35.

CRAVEN, Cravent, Cravant. [from Sax. *crafan*, to crave, beg or implore.] In old English law. A word of obloquy and disgrace, in the ancient trial by battel, on the uttering of which by either champion, he was considered as yielding the victory to

his opponent, and was condemned, as a recreant, *amittere liberam legem*, [to lose his frank-law,] that is, to become infamous, and not to be accounted a free and lawful man, (*liber et legalis homo*.) being supposed by the court to be proved forsworn, and therefore never to be put on a jury or admitted as a witness in any cause. 3 *Bl. Com.* 340. 4 *Id.* 348. 4 *Steph. Com.* 415. Called *verbum recreantis*, the word of recreancy. *Fleta*, lib. 1, c. 38, § 18. The word is still popularly used in the same dishonorable sense. See *Battel, Champion, Recreant*.

CRAYER. In old English law. A kind of small sea-vessel or ship. *Stat.* 14 *Car.* II. c. 27. *Cowell*.

CREAMUS. Lat. [from *creare*, to create.] We create. One of the words by which a corporation in England was formerly created by the king. 1 *Bl. Com.* 473.

CREANCE. L. Fr. [from *creier*, to believe.] Belief; persuasion; trust; credit; faith. *L. Fr. Dict.*

CREANCER, Creansor, Creansour. L. Fr. [from *creance*, q. v.] One who trusts or gives credit; a creditor. *Britt.* c. 28, 78.

CREARE. Lat. In the civil law. To create; to constitute or appoint, as a guardian, (Gr. *χρηστωσειν*.) *Dig.* 28. 5. 21.

CRECA, Creccum. L. Lat. In old English law. A creek or landing place. *Town.* Pl. 62. *Cowell.* *Plowd.* 1. See *Creek*.

CREDENTIALS. Papers which give a title or claim to confidence; as the letters of commendation and power given by a government to an ambassador or envoy, which give him credit at a foreign court.

CREDERE. Lat. To believe; to put faith in; to confide; to trust; to entrust with. See *Dig.* 12. 1. *Mercatores et alii creditores qui bona et catalla sua diversis debitoribus crediderint*; merchants and other creditors who may have trusted their goods and chattels to divers debtors. *Fleta*, lib. 2, c. 64, § 1.

CREDIBILITY. [from *credible*, q. v.] In the law of evidence. Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. 1 *Burr.* 414, 417. 3 *Bl. Com.* 369.

CREDIBLE. [Lat. *credibilis*, from *credere*, to believe, or trust.] In the law of evidence. To be believed; entitled to credit; worthy of belief. A term applied to

a witness after his evidence is given. This term is never used as synonymous to *competent*. When applied to testimony, it presupposes the evidence given. Lord Mansfield, 1 *Burr.* 414, 417. 1 *W. Bl.* 98.

CREDIT. [Lat. *creditum*, from *credere*, q. v.] Belief; trust; confidence.

Payment of money, in confidence of future re-payment. Transfer of property sold, in confidence of future payment of the purchase money.

Capacity of being trusted; ability to borrow; the reputation of solvency or probity which entitles a man to be trusted. Credit is neither money, goods nor a chose in action. McCoun, J. 4 *Comstock's R.* 472.

CREDITOR. Lat. and Eng. [from *credere*, to trust.] One who gives or has given credit to another; one who trusts another; one to whom a debt is due.* The correlative of *debtor*.

In a large sense, one to whom any obligation is due. *Creditorum appellatione non hi tantum accipiuntur qui pecuniam crediderunt, sed omnes quibus ex qualibet causâ debetur.* *Dig.* 50. 16. 11.

CREDITUS. Lat. In old English law. Believed; trusted. *Male creditus*; ill thought of; in bad repute or credit. *Bract.* fol. 116.

CREEK. [L. Lat. *creca*, *creccum*; O. Eng. and L. Fr. *cryke*.] In English law. A small inlet of the sea.* A corner of the sea, let into the land farther than ordinary. *Callis on Sewers*, [58,] 72. An inlet of sea, cornered into the main land. *Id.* [56,] 69.—A narrow little passage, having shore on either side. *Hale de Jur. Mar.* pars 2, c. 2. A part of a haven where any thing is landed from the sea. *Cowell*.—A landing place; a small landing place, or "arrival." *Blount.* *Stat.* 4 *Hen.* IV. c. 20, cited *ibid.* Lord Hale makes a distinction between creeks of the sea and creeks of ports. *Hale de Jur. Mar. ub. sup.*

In American law. A small stream, less than a river. A small river. 12 *Pick. R.* 184. 1 *Comstock's R.* 107.

CREIER, Creyer, Crere, Crier, Craire, Crayer. L. Fr. To believe; to give credit to; to confide in; to trust; to entrust with. *Kelham.* *L. Fr. Dict.* *Britt.* c. 4.

CREMENTUM COMITATUS. L. Lat. In old English law. The increase of the county. The sheriffs of counties anciently answered, in their accounts, for the im-

provement of the king's rents above the ancient vicontiel rents, under this title. *Hale's Sheriffs' Accounts*, 86. *Wharton's Lex.*

CREPARE OCULUM. L. Lat. In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it. *Wharton's Lex.*

CREPIDO. Lat. In old pleading. A creek. *Towns. Pl.* 195.

CREPUSCULUM. Lat. In old English law. Daylight or twilight; the light which continues after the setting, or precedes the rising of the sun.* 4 *Bl. Com.* 224. 4 *Steph. Com.* 147. *Fleta*, lib. 5, c. 5, § 31.

CRETA. Lat. Chalk. *Fleta*, lib. 4, c. 19, § 6.

CRETIFODINA. Lat. [from *creta*, and *fodire*, to dig.] In the civil law. A chalk-pit. *Dig.* 7. 1. 9. 2. *Id.* 7. 1. 13. 5. *Id.* 8. 3. 5.

CRETINUS. L. Lat. [L. Fr. *cretine*, *cretain*.] In old records. A sudden stream or torrent; a rising or inundation. *Cowell. Hist. Croyl. Contin.* 485.

CRETIO. Lat. In the civil law. A certain number of days allowed an heir to deliberate whether he would take the inheritance or not. *Calv. Lex.*

CREW. In maritime law. A ship's company, embracing all the officers, as well as the common seamen. *Story*, J. 3 *Sumner's R.* 209, 213, 214. This is the ordinary sense of the word. *Id.* 216.

In a stricter sense, the officers and common seamen of a vessel, excluding the master. *Id.* 214.

In the strictest sense, the common seamen only, excluding the master and officers. *Id. ibid.* See *Id.* 216.

CREW LIST. In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of Congress, and sometimes by treaties. *Act of Congress*, March 3, 1813. It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. *Jacobsen's Sea Laws*, 66, 69, note.

CRI. L. Fr. Cry; hue and cry. *LL. Gul. Cong.* ll. 5, 48.

CRIE. L. Fr. A proclamation. *Britt.* c. 2. A cry, or outcry. *Crie de pays*; the cry of the country; hue and cry. *Stat. Westm.* 1, c. 9. See *Cry de pais*.

CRIER. L. Fr. To proclaim; to make proclamation. *Kelham*.

To read or recite aloud. See *Criez la peez*.

CRIER. [L. Fr. *criour*; Lat. *præco*.] In practice. An officer of a court, whose duty is to make proclamation of the opening and adjournment of the court; to call parties, jurors and witnesses in causes; to assist in the administration of oaths; to impose silence during the proceedings, and to perform other incidental services. See *Bacon's Works*, iv. 316.

An auctioneer. See *Cryer*.

CRIEZ LA PEEZ. L. Fr. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared, directed the serjeant or countor in attendance to recite or read aloud the concord or agreement between the parties, as to the lands intended to be conveyed. *Stat. Modus Levandi Fines*, 18 *Edw.* I. st. 4. 2 *Inst.* 510. 2 *Reeves' Hist. Eng. Law*, 224, 225. *Crabb's Hist.* 179. See *Concord, Countor, Fine*.

CRIM. CON. An abbreviation of *Criminal conversation*, (q. v.)

CRIME. [Lat. *crimen*.] An act committed or omitted, in violation of a public law, either forbidding or commanding it. 4 *Bl. Com.* 5.—A breach or violation of some public right or duty due to a whole community, considered as a community in its social aggregate capacity; as distinguished from a civil injury.* *Id. ibid.* See *Civil injury*.—The violation of a right when considered in reference to the evil tendency of such violation, as regards the community at large. 4 *Steph. Com.* 55. 1 *Id.* 127, 128. In this sense, crimes include misdemeanours.

In a narrower sense, a crime is distinguished from a misdemeanour, as being an offence of a deeper and more atrocious dye, [and usually amounting to a felony]. 4 *Bl. Com.* 5. See *Felony, Misdemeanour*.

In New-York, the terms "crime" and "offence," have been declared to mean "any offence for which any criminal punishment may by law be inflicted." 2 *Rev. Stat.* [702, § 32,] 587, § 33. This definition has been adopted by Mr. Warren. *Law Studies*, 355, (Am. ed.)

CRIMEN. Lat. (plur. *crimina*.) A crime. See *Crime*.

In the civil law. An accusation or charge. *Inst.* 1. 26, pr. *Cooper's Notes in loc.* *Heinecc. El. Jur. Civ.* lib. 1, tit. 26,

§ 302. It has also sometimes this sense in English law. *Crimen felonie inposuit* has often been translated, "imposed the crime of felony," but perhaps its more appropriate signification is—"preferred a charge of felony." Abbott, J. 6 *M. & S.* 33.

CRIMEN FALSI. Lat. In the civil law. The crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; or by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. *Dig.* 48. 10. *Hallifax, Anal.* b. 3, ch. 12, num. 56—59. See *Falsum*.

In the common law, this term is also used, but in no precise or determinate sense. In the ancient law of England, it was employed to denote the making of false charters, false measures, false money, and other falsifications. 1 *Reeves' Hist. Eng. Law*, 200. 2 *Id.* 8, 9. *Glanv.* lib. 14, c. 7. More particularly it was used to signify the two crimes of counterfeiting or falsifying the king's seal, and of making false money, (including the reduction of the value of genuine coin, as by clipping.) *Bract.* fol. 104 b, 119 b. *Fleta*, lib. 1, c. 22. In Scotch law, it has been defined, "a fraudulent imitation or suppression of truth, to the prejudice of another." *Ersk. Inst.* b. 4, tit. 4, § 66.

In modern law, its predominant signification is *forgery*; though it includes also perjury and offences of a kindred character. 4 *Bl. Com.* 89, 247. 4 *Steph. Com.* 89, 247. But it appears never to have been employed in the extensive sense given to it by the civil law. 1 *Greenleaf on Ev.* § 373, and note. Wilde, J. 11 *Meicalf's R.* 302.

CRIMEN INCENDII. L. Lat. In old criminal law. The crime of burning, (*Sax. bernet*;) which included not only the modern crime of arson, (or burning of a house,) but also the burning of a man, beast or other chattel. *Britt.* c. 9. *Mirr.* c. 1, sect. 8. *Crabb's Hist. Eng. Law*, 308. See *Arson*.

CRIMEN LÆSÆ MAJESTATIS. Lat. In criminal law. The crime of injuring majesty; or violating the majesty of the prince; high treason. *Glanv.* lib. 1, c. 2. *Bract.* fol. 118, 119. 4 *Bl. Com.* 75. 2 *How. St. Trials*, 167. A term used by the ancient writers on English law, to de-

note any offence affecting the king's person or dignity. *Crabb's Hist. Eng. Law*, 302. 2 *Reeves' Hist.* 6. Called also *lese-majesty*, and sometimes simple *majestie*.

It is borrowed from the civil law, in which *crimen majestatis* signified the undertaking of any enterprise against the emperor or the republic. *Inst.* 4. 18. 3. *Dig.* 48. 4. 1. 1. See *Lese-majesty*.

CRIMINAL. [Lat. *criminalis*, from *crimen*, crime.] Relating to crime; as criminal law, criminal evidence.

Having the character of crime, as a criminal act.

CRIMINAL CONVERSATION. Adultery; unlawful intercourse with a married woman.

CRIMINAL INFORMATION. In English criminal law. A proceeding at the suit of the king, without a previous indictment or presentment by a grand jury. 4 *Bl. Com.* 398. *Cole on Criminal Informations*.

CRIMINAL LAW. That branch or division of law which treats of crimes and their punishments.

CRIMINAL LETTERS. In Scotch practice. A writ summoning a party accused of crime, to appear and stand trial on a day named. 2 *Alison's Pr.* 217.

CRIMINALIS. Lat. [from *crimen*, q. v.] In old English law. Criminal. *Placitorum aliud est criminale, aliud civile.* *Glanv.* lib. 1, c. 1. *Placitorum alia criminalia, et alia civilia*; of actions some are criminal and others civil. *Bract.* fol. 101 b. *Actiones criminales.* *Fleta*, lib. 1, c. 16, § 3.

In criminalibus sufficit generalis malitia intentionis, cum facto paris gradus. In criminal cases, general malice of intention is sufficient, if followed by an act of equal or corresponding degree. *Bacon's Max.* 65, regula 15. "All crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact, which, though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of that error, if another particular ensue of as high a nature. *Id. ibid.* Therefore, if an poisoned apple be laid in a place to poison J. S., and J. D. cometh by chance and eateth it, this is murder in the principal that is actor; and yet the malice in individuo was not against J. D." *Id. ibid.*

CRIMINALITER. Lat. [from *crimi-*

nalis.] Criminally. *Inst.* 4. 4. 10. *Bract.* fol. 101 b, 102.

CRIMINATE. To expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to criminate him. See 1 *Stark. Ev.* 144.

CR'M. A contraction of *crastinum*, (q. v.) in old pleadings. 1 *Inst. Cler.* 9.

CR'O. A contraction of *crastino*, (q. v.) *Fleta*, lib. 2, c. 32, § 2.

CRO, Croo, Croy. In old Scotch law. A composition, satisfaction or assyhtment, (q. v.) for the slaughter of a man. *Reg. Majest.* lib. 4, c. 24. *Spelman. Act. Ja.* I. p. 6, c. 93. *Skene de Verb. Sign.* The same with the Saxon *weregild*.

CROCKARDS, Crocards. A foreign coin of base metal, prohibited by statute 27 Edw. I. st. 3, from being brought into the realm. 4 *Bl. Com.* 98. *Crabb's Hist. Eng. Law*, 176.

CROFT. [L. Lat. *croftum*, *croftus*, *crofta*, *crufstum*, *crufsta*.] In old English conveyancing. A small piece of ground adjoining a dwelling-house, and enclosed for pasture or arable, or any particular use; a close. *Cowell. Spelman. Blount.* 11 *East*, 58. The same with what was formerly called a *pightel*, (q. v.) *Spelman* describes it as lying behind a farm-house, and fenced off from the larger fields for the purpose of keeping farm animals for sudden uses, (*ut animalia rustica subitis usibus exhibeat*). Derived by some from Sax. *creaft*, skill, from the skill laid out in cultivating it. *Termes de la Ley. Cowell.* But by *Spelman*, through the Lat. *crypta*, from Gr. κρυπτα, to conceal, as being a secret or separate place. See *Close*.

CROIRE. L. Fr. To believe. *Kelham.* See *Creier*.

CROISES, Croyses. L. Fr. [L. Lat. *cruce signati*.] Pilgrims; so called as wearing the sign of the cross on their upper garments. *Britt.* c. 122. The knights of the order of St. John of Jerusalem, created for the defence of the pilgrims. *Cowell. Blount.* See *Cruce signati*.

CROPPA, Croppus. L. Lat. In old records. A crop; the product of a harvest. *Registr. Cant. Ecclesie MS. Cowell.*

CROSS ACTION. In practice. An action brought by a party sued against the party who has sued him, upon the same subject matter, as upon the same contract.* This is necessary whenever the subject matter of the action cannot be used as a

defence to the first action. 10 *Ad. & Ell.* 643. 2 *Smith's Leading Cases*, 1, notes, 14. See *Circuity of action*.

CROSS BILL. In equity pleading. A bill filed by a defendant in a suit in equity, against the plaintiff or complainant, in order to obtain some relief against him. 3 *Bl. Com.* 448. A defendant cannot pray anything in his answer but to be dismissed the court; if he has any relief to pray against the plaintiff, he must do it by an original bill of his own, which is called a *cross bill*. *Id. ibid.* A cross bill is a bill brought by a defendant against a plaintiff or other parties in a former bill depending, touching the matter in question in that bill. *Mitford's Eq. Pl.* 80, 81, (98, and note, *Moulton's ed.* 1849). It is treated as a mere auxiliary suit, or as a dependency upon the original suit. *Story's Eq. Pl.* § 399. It is generally considered and used as a matter of defence; the original and the cross bill constituting but one cause. 7 *Johns. Ch. R.* 252. A cross bill answers to the *re-convento* of the civil law. *Güll. Forum Rom.* ch. 4.

CROSS EXAMINATION. In practice. The examination of a witness by the party opposed to the party who has first examined him, in order to test the truth of such first or direct examination, which is also called examination in chief.* Cross examination is usually by the party who did not call the witness; but the courts frequently permit an adverse witness to be cross examined by the party who calls him. 1 *Starkie on Evidence*, [132,] 187, 188.

CROSS REMAINDER. A species of remainder created out of a tenancy in common. When lands are given to two or more, as tenants in common, it frequently happens that a particular estate is limited to each of the grantees in his share, with remainder over to the other or others of them,—as if a man give lands to his two children as tenants in common in tail, and direct that upon failure of the issue of one of them, his share shall go over to the other in tail, and *vice versa*. Such ulterior estates as these are called *cross remainders*, because each of the grantees has reciprocally a remainder in the share of the other; and it is a rule respecting them that in a *deed* they can be given only by express limitation, and shall never be implied; though it is otherwise with respect to *wills*, which are expounded more liberally, with a view to the presumable intent of the donor; for in

these, cross remainders may be raised not only by actual limitation, but by any expression from which the design to create them can reasonably be inferred. 1 *Steph. Com.* 326, 327. So, where a devise is of Black-acre to A., and of White-acre to B., in tail, and if they both die without issue, then to C. in fee; here A. and B. have cross remainders by implication, and on the failure of either's issue, the other or his issue shall take the whole. 2 *Bl. Com.* 381. See 2 *Crabb's Real Prop.* 972, § 2339, et seq. 1 *Preston on Est.* 94, 115. 2 *Powell on Devises*, 604, ch. xxxi. 4 *Kent's Com.* 210. 1 *Hilliard's Real Prop.* 650.

CROWN. [Lat. *corona*; Fr. *corone*.] The sovereign power in a monarchy, especially in relation to the punishment of crimes. "Felony is an offence of the crown." *Finch's Law*, b. 1, ch. 16.

CROWNER, Crowner. In old Scotch law. Coroner; a coroner. 1 *Pitt. Crim. Trials*, part 2, p. 82. *Skene de Verb. Sign. voc. Coroner*.

CROWN LAW. Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 *Bl. Com.* 2. See *Pleas of the Crown*.

CROWN OFFICE. A department belonging to the court of Queen's Bench, commonly called the *crown side* of the court, in which it takes cognizance of all criminal causes, from high treason down to the most trivial misdemeanour or breach of the peace. 4 *Bl. Com.* 265. 4 *Steph. Com.* 326. In this office, informations are filed by the attorney-general, and master of the crown office. *Id.* 379. 4 *Bl. Com.* 308. *Cole on Crim. Inform.* ch. i. ii. and *Addenda*.

CROWN SIDE. The criminal department of the court of Queen's Bench; the civil department or branch being called the *plea side*. 4 *Bl. Com.* 265. 3 *Id.* 42. See *Crown office*.

CRUCE SIGNATI. L. Lat. [Fr. *croises*, *croyses*.] In old English law. Signed or marked with the cross. Pilgrims to the holy land [or crusaders]; so called because they wore the sign of the cross upon their garments. *Spelman*, voc. *Cruciferi*. *Bract.* fol. 20. *Id.* fol. 338 b, 444. *Mag. Cart. Johan.* c. 57.

CRUCIS JUDICIUM. Lat. In old European law. The trial or judgment of the cross. One of the modes of trial by

which crimes were formerly attempted to be discovered or purged. *Spelman*.

CRUELTY. [Lat. *savitia*.] In the law of divorce. Such conduct on the part of a husband towards his wife as affords a reasonable apprehension of bodily hurt. 1 *Hagg. Cons. R.* 35. See 2 *Kent's Com.* 125, 126. 19 *Connecticut R.* 189. 6 *Texas R.* 18.

CRUISE. A voyage for the purpose of making captures *jure belli*. *Story*, J. 2 *Gallison's R.* 526, 538, 539.

CRUX. Lat. In old English law. A cross; the cross. The badge of the old crusaders, and of the Templars and Hospitalers. *Fleta*, lib. 2, c. 50, §§ 16, 18.

CRY (or CRIE) DE PAIS. L. Fr. In old English law. The cry of the country. The hue and cry after offenders, as raised by the country, [i. e. the inhabitants,] in the absence of the constable to whom that duty properly belonged. 2 *Hale's P. C.* 100. See *Hue and cry*.

To **CRY.** To call out aloud; to proclaim; to publish; to sell at auction. "To cry a tract of land." 1 *Wash. (Va.) R.* [260.] 335. "Cries it out to C. as the highest bidder." *Id.* See 9 *Grattan's R.* 541. 11 *Id.* 99. See *Outcry*.

CRYER, Crier. An auctioneer. *Lyons*, J. 1 *Wash. (Va.) R.* [262.] 337. One who calls out aloud; one who publishes or proclaims. See *Crier*.

CUCKING STOOL. In old English law. An ancient engine for the punishment of scolds, delinquent brewers and bakers, called also *tumbrel*, *trebucket*, and *castigatory*, (qq. v.) It seems to have been anciently written *goging stole*, and corrupted into *ducking stool* from the immersion in water which was a part of the punishment. 4 *Bl. Com.* 169. *Blount*.

CUCURBITARE. L. Lat. In feudal law. To cuckold; to make a cuckold. *Feud. Lib.* 1, tit. 5. *Lib.* 2, tit. 38.

CUENS, Quens. L. Fr. Count or earl. *Kelham*.

CUI. Lat. To whom. See *Per et Cui*.

CUI ANTE DIVORTIUM. L. Lat. (Whom before divorce.) In old English practice. A writ of entry which lay for a woman divorced from her husband, to recover her lands, &c., from him to whom her husband had alienated them during the marriage. It was so called from the words of the writ,—*cui ipsa ante divortium inter eos celebratum, contradicere non potuit*, &c., (whom she, before the divorce between

there, could not gainsay). *Reg. Orig.* 233. *F. N. B.* 204, *F.* 3 *Bl. Com.* 183, note. *Termes de la Ley.* *Crabb's Hist. Eng. Law*, 287. See 3 *Reeves' Hist.* 38. *Roscoe's Real Act.* 97.

CUI BONO. Lat. For whose good; for whose use or benefit. "*Cui bono* is ever of great weight in all agreements." Parker, *C. J.* 10 *Mod.* 135. Sometimes translated—for what good, for what useful purpose.

CUI IN VITA. L. Lat. (Whom in the life.) In old English practice. A writ of entry which lay for a woman against him to whom her husband aliened her lands or tenements in his lifetime. So called from the words of the writ,—*cui ipsa in vita sua contradicere non potuit*, &c.; (whom she, in his lifetime, could not gainsay, &c.) *Reg. Orig.* 232 b. *F. N. B.* 193. *Bract.* fol. 202, 321 b. 2 *Bl. Com.* 183, note. *Stat. Westm.* 2, c. 3. *Litt.* sect. 594. 3 *Reeves' Hist.* 36. *Roscoe's Real Act.* 96.

Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest. To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. *Dig.* 2. 1. 2. 1 *Wooddes. Lect.* Introd. lxxi. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 *Kent's Com.* 839.

Cui jus est donandi, eidem et vendendi et concedendi jus est. He who has the right of giving has also the right of selling and granting. *Dig.* 50. 17. 163.

Cui licet quod majus, non debet quod minus est non licere. He who is allowed to do the greater, ought not to be prohibited from doing the less. He who has authority to do the more important act, ought not to be debarred from doing what is of less importance. 4 *Co.* 23. One who has power to grant in fee simple may grant for life or for years; for an estate in fee simple includes all. *Id. ibid.* A man having a power to do a thing, may do less than such power enables him to do. *Broom's Maxims*, 76, [180.] A doctrine frequently applied in the law of principal and agent. More briefly expressed in the civil law, *Non debet, cui plus licet, quod minus est non licere.* It ought not to be that he who is allowed to do the greater, should not be allowed to do the less. *Dig.* 50. 17. 21.

Cuiusque aliquis quid concedit, concedere videtur et id sine quo res ipsa esse non potuit. See *Concedere*.

Cuiuslibet in arte sua perito est credendum. Any person skilled in his peculiar art or profession, is to be believed, [i. e. when he speaks of matters connected with such art.] *Co. Litt.* 125 a. *Shelford, Marr. & Dis.* 206. Credence should be given to one skilled in his peculiar profession. *Broom's Max.* [730.] Applied to witnesses who are persons of skill, (*periti*, or *experts*, as they are frequently called) in any particular science, trade or occupation, implying that their statements on such subjects are to be believed, or received as evidence. *Id. ibid.* 421. The authority of mercantile usage, which is proved by merchants, rests on this maxim. 1 *Bl. Com.* 75.

The following translations have been given of this maxim: "Every man is to be considered skilful in his own profession." *Branch's Princ.* "Every one is considered skilful in his own art." *Wharton's Lex.* Both these are not only grammatically incorrect, (the peculiar sense of *credendum* being also overlooked,) but convey a very different meaning from that intended by the original, which it will be seen embraces two ideas; skill in a party offered as a witness, and belief or credit founded thereon. So far from presuming skill in such cases, the law generally requires that fact to be established by preliminary examination. See *Broom's Max.* 424, [724,] and the case there cited. When the witness is shown to be *peritus*, and not before, the emphatic word *credendum* applies in its full force, and his statements are entitled to be believed, or received as evidence.

The important word *perito* is sometimes entirely omitted in citing this maxim; as in 1 *Bl. Com.* 75.

Cui pater est populus, non habet ille patrem. Cui pater est populus, pater est sibi nullus et omnia.

He whose father is the people, has no father. He whose father is the people has no father and every one for a father. These two lines are referred to in the Year Book H. 8 Edw. III. 42, as the *Ley civile* que dit, &c.

Cuius est commodum, ejus debet esse incommodum. See *Commodum*.

Cuius est dare, ejus est disponere. Whose it is to give, his it is to dispose, [i. e. to regulate.] 2 *Co.* 71 b. *Wingate's Max.* 53, max. 22. The bestower of a gift has a right to regulate its disposal. *Broom's Max.* 304, [846.] Thus, the bargainer of an estate may annex such conditions as he pleases to the estate bargained, provided

they are not illegal, repugnant or impossible. *Id. ibid.* So, the founder of an eleemosynary corporation has, on this principle, the right of visitation, that is, the right of inspecting the management of the institution. 2 *Kent's Com.* 302.

Cujus est divisio, alterius est electio. Whichever [of two parties] has the division [of an estate], the choice [of the shares] is the other's. *Co. Litt.* 106 b. In partition between coparceners, where the division is made by the eldest, the rule in English law is, that she shall choose her share last. *Id. ibid.* 2 *Bl. Com.* 189. 1 *Steph. Com.* 323. The reason of the rule Lord Coke declares to be "for avoiding of partiality, which might apparently follow if the eldest might both divide and choose."

The form of this maxim, (which in its terms obviously contemplates but two parties,—one dividing and the other choosing,) seems hardly to convey the full meaning usually given it, which would be more exactly expressed by reading *cujus est divisio, ejus est ultima electio*. This may have led to the use of the word *ulterius* for *alterius*, in some of the editions of Blackstone.

Cujus est institutio, ejus est abrogatio. Whose right it is to institute, his right it is to abrogate. *Sydney's Disc.* 15, cited *Broom's Max.* [681,] notes.

Cujus est solum, ejus est usque ad cælum. Whose is the soil, his it is up to the sky. *Co. Litt.* 4 a. He who owns the soil, or surface of the ground, owns, or has an exclusive right to every thing which is upon or above it, to an indefinite height. 9 *Co.* 54. *Shep. Touch.* 90. 2 *Bl. Com.* 18. 3 *Id.* 217. *Broom's Max.* 172, [289.]

Cujus est solum, ejus est usque ad cælum et ad inferos. He who owns the soil owns it to the sky and to the centre of the earth; owns every thing above and below it, to an indefinite extent. Land, in its legal signification, has an indefinite extent upwards as well as downwards; upwards, therefore, no man may erect any building or the like, to overhang another's land; and downwards, whatever is in a direct line between the surface of any land and the centre of the earth, belongs to the owner of the surface. So that the word "land" includes not only the face of the earth, but any thing under it or over it. 2 *Bl. Com.* 18. See *Land*.

Cujus juris [i. e. jurisdictionis] est principale, ejusdem juris erit accessorium. He who has jurisdiction of the principal, has

also jurisdiction of the accessory. *Bract.* 481 a. 2 *Inst.* 493.

Cujus per errorem dati repetitio est, ejus commiste dati donatio est. He who gives a thing by mistake, has a right to recover it back; but if he gives designedly, it is a gift. *Dig.* 50. 17. 53.

Cujusque rei petisissima pars est principium. The chiefest part of every thing is the beginning. *Dig.* 1. 2. 1. 10 *Co.* 49 a. See *Causa et origo est materia negotii*. The word *principium* is translated in Branch and Wharton, *principle*.

CUL. An abbreviation of *culpabilis*, guilty. "If he be *cul.* of making, writing and composing," &c. Lord Holt, *Comb.* 359. *Non cul.* not guilty. *Id.* 393. *Nient cul.* not guilty. 4 *Bl. Com.* 339, 340.

CULAGIUM. L. Lat. In old records. The laying up a ship in a dock, in order to be repaired. *Cowell.* *Blount.*

CULP, Coulp. Abbreviations of *Fr. culpable*, or *culpable*; guilty. *Year Books, passim.*

CULPA. Lat. In the civil and common law. Neglect; negligence; omission; carelessness; fault;—the opposite of *diligentia*, (q. v.) A term frequently used in the law of bailments, expressing a mean between accident (*casus*) on the one side, and fraud (*dolus*) on the other. *Jones on Bailm.* 8. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 784. Three degrees of *culpa* are recognised by the civilians, as well as in the common law of bailments; *lata culpa*, *levis culpa* and *levissima culpa*. *Id. ibid.* § 787. *Jones on Bailm.* 21, 22. *Story on Bailm.* § 18.

Lata culpa; gross fault or neglect; the omission of that care which even inattentive or thoughtless men never fail to take of their own property. *Jones on Bailm.* 21, 22. *Duncan, J.* 14 *Serg. & Rawle*, 275. Otherwise expressed by Sir William Jones, as the want of that care which every man of common sense, however inattentive, takes of his own property. *Jones on Bailm.* 8, 118. 2 *Kent's Com.* 560. See *Story on Bailm.* § 16. Called in the Digests, *nimia negligentia*, *id est, non intelligere quod omnes intelligunt*; (extreme negligence, that is, not to understand what all understand). *Dig.* 50. 16. 213. 2. *Qui ne ea quidem diligentia quâ omnes, etiam dissoluti homines uti solent, utuntur, latam [culpam] committere dicuntur*; they who do not observe even that care which all men, even the careless, are in the habit of observing, are said to com-

mit [or be guilty of] gross fault, or neglect. *Heinecc. Elem. Jur. Civ. lib. 3, tit. 14, § 787.*

Levis culpa; ordinary fault or neglect; the want of that diligence which the generality of mankind use in their own concerns, that is, of ordinary care. *Jones on Bailm. 22.* The omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns. *Id. 118. Qui omittunt diligentiam a frugi patrefamilias adhiberi solitam, levem [culpam committere dicuntur;]* they who omit that care which is usually taken by a careful head of a family, [are said to be guilty of] ordinary [fault or neglect.] *Heinecc. Elem. Jur. Civ. lib. 3, tit. 14, § 787.*

Levissima culpa; slight fault or neglect; the omission of that care which very attentive and vigilant persons take of their own goods, or, in other words, of very exact diligence. *Jones on Bailm. 22.* The omission of that diligence which very circum-spect and thoughtful persons use in securing their own goods and chattels. *Id. 118. Qui eam non adhibent diligentiam quam solent patrefamilias ad rem attentissimi, culpam levissimam [committere dicuntur;]* they who do not observe that care which the most attentive heads of families usually exercise, [are said to be guilty of] slight neglect. *Heinecc. Elem. Jur. Civ. lib. 3, tit. 14, § 787.*

Lata culpa plane dolo comparabitur. Gross neglect may clearly be put on a level with fraud, [is clearly equivalent to fraud]. *Dig. 11. 6. 1.* Otherwise expressed, *Lata culpa dolo æquiparatur.*

Magna negligentia culpa est; magna culpa dolus est. Gross negligence is fault; gross fault is fraud. *Dig. 50. 16. 226.*

The doctrine embodied in these maxims, in the literal sense given to them, is adopted by Sir William Jones in his Essay on the Law of Bailments, and seems to have been formerly recognised to nearly the same extent in the common law. The modern doctrine, however, is, that gross negligence, though it may be evidence of fraud, is not the same thing; or, in other words, it may in certain cases amount to fraud, but it is not fraud by inference of law, but matter of fact for a jury. *Parker, C. J. 17 Mass. R. 500. Lord Tindal, C. J. 2 Man. & Gr. 852. Lord Denman, C. J. 4 Ad. & Ell. 876. Story on Bailm. § 19. 2 Kent's Com. 560, and note.*

The true interpretation of the civil law maxims depends obviously on the construction to be given to the emphatic terms *culpa* and *dolus*, both of which have been made the subjects of much discussion by civilians and jurists. The exact meaning of *culpa*, indeed, does not seem to have been entirely settled in the Roman law. It is usually translated *negligence*, and is expressly used by Justinian as a synonyme of that word, (*negligentia*), and also of *desidia*, (remissness). *Inst. 3. 26. 9.* But the language of the rule in the Digests already quoted,—*Magna negligentia culpa est, magna culpa dolus est*,—obviously makes it to be something more than mere negligence, being a high degree of negligence, just as fraud was a high degree of *culpa*; and the same idea is very significantly conveyed by that common expression in modern law,—*culpable negligence*,—which clearly implies that *all* negligence is not culpable. It will be seen, moreover, that the maxim last quoted fixes *culpa* as a mean between *negligentia* on the one side, and *dolus* on the other. Sir William Jones attributes this want of uniformity or precision, in the use of the word *culpa*, to the intrinsic poverty of the Latin language, as compared with the Greek, and the want of proper words to express the various shades of fault. *Jones on Bailm. 33.* Heineccius defines *culpa*, from the Digests, to be *factum inconsultum quo alter injuria læditur, vel quod quædam diligente provideri potuerit, non sit provisum*; an act done without purpose, (or settled design,) by which another is injured; or an injurious act which no care was taken to foresee and prevent, when it might have been foreseen and prevented by a careful person. *Heinecc. El. Jur. Civ. lib. 3, tit. 14, § 784.* And see *Ayliffe Pand. b. 2, tit. 13, cited in Story on Bailm. § 20 b, note.* As to the meaning of the important word *dolus*, see *Dolus*.

CULPA. Lat. In the civil and common law. Fault; blame; misconduct; culpable conduct; conduct for which a party may be punished, or held to answer in damages or a penalty. Lord Cottenham, C. 6 *Bell's Appeal Cases*, 120. Lord Brougham. *Id. ibid.*

Culpa caret qui scit sed prohibere non potest. He is clear of blame, who knows but cannot prevent. *Dig. 50. 17. 50.*

Culpa est immiscere se rei ad se non pertinenti. It is culpable conduct for a man

to meddle with a thing not belonging to, or concerning him. *Dig.* 50. 17. 36. 2 *Inst.* 208.

Culpa tenet [teneat] **suos auctores.** Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. *Ersk. Inst.* b. 4, tit. 1, § 14. *Id.* b. 4, tit. 4, § 103. Lord Campbell, 6 *Bell's Appeal Cases*, 539.

Culpæ pœna par esto. Let the punishment be proportioned to the offence. *Branch's Princ.*

CULPABILIS. Lat. In old English law. Guilty. *Culpabilis de intrusione*; guilty of intrusion. *Fleta*, lib. 4, c. 30, § 11.

CULPABLE HOMICIDE, described as a crime varying from the very lowest culpability, up to the very verge of murder. Lord Moncrieff, *Arkley's R.* 72.

CULPRIT. A word made up of two distinct words or abbreviations of words, (*cul.* abbrev. of *culpabilis*, guilty, and *prit* or *prest*, ready, i. e. to prove it,) used anciently on the arraignment of a prisoner at the bar, and employed, in the course of time, to denote a prisoner so arraigned. It has not now any technical meaning, but is popularly used to denote any criminal, especially one found or confessed to be guilty.

*** Anciently, when a prisoner had pleaded "not guilty," (L. Lat. *non culpabilis*; L. Fr. *nient culpable*, or, as it was abbreviated on the minutes, "*non* or *nient cul.*") the clerk of the assize, or clerk of the arraigns, on behalf of the crown, replied that the prisoner *was* guilty, (*cul.*) and that he was *ready*, (*prit.*) to prove him so. 4 *Bl. Com.* 339. In the course of time, it became the practice for the officer of the court to read aloud these words, without regard to their real meaning, (which was beginning to be forgotten, owing to the disuse of Law French,) and to apply them as an appellation of the prisoner himself; for when a prisoner pleaded not guilty, the officer used to say, "*cul. prit.*—how wilt thou be tried?" to which the prisoner usually replied, "by God and the country," meaning *by a jury*. 4 *Steph. Com.* 408, note. Mr. Christian gives a different explanation, and supposes *prit* to have been a corruption of *pnt*, written for *ponit*, as a minute that issue was joined, or *ponit se super patriam*, (he puts himself upon the country,) or *pnt se* might be converted into *prit* or *prest*, as

it was sometimes written. 4 *Chitt. Bl. Com.* 340, note. As a confirmation of this conjecture, it is said that the clerk of the arraigns in the English courts, at this day, immediately after the arraignment, writes upon the indictment, over the name of the prisoner, *pnts.* *Id. ibid.* However this may be, there is little doubt that the explanation of Blackstone is the true one. That *prit* (pronounced *prit*) or *prest* was the technical word appropriated to express a joinder in issue, or rather a *readiness to prove* an issue joined, appears from the use constantly made of it in civil cases, throughout the Year Books. See *Prest*, *Prist*. That it was not a corruption of a Latin word or words, seems clear, not only from such phrases as *prest averrer*, (*Yearb. M.* 1 Hen. VI. 21. *Id.* M. 12 Hen. VI. 13, corresponding accurately with the L. Lat. *paratus verificare*,) but from the general fact that the language of the oral pleadings in which it occurs, was exclusively Law French, the Latin being the (record) language of the *written* pleadings of a subsequent period. *Prist* and *prest* were constantly used as terms of issue, by both parties, as in the following entry: *Ne unques seisi*; *Prist, &c. Seisi*; *Prist, &c.* (Never seised; Ready, &c. Seised, Ready, &c.) P. 6 Edw. III. 68. But the following extracts are more apposite to the present head, as showing the use of *prit* and *prest* in immediate connection with *culp.* *A q' le pl' dit q', &c. et issint nient culp.* *A q' le def' dit q' culp.* *Prest averrer.* To which the plaintiff says that, &c. and so not guilty. To which the defendant says, guilty. Ready to verify. M. 1 Hen. VI. 21. *De rien culp. Prist, &c.* Not guilty. Ready, &c. P. 3. Edw. III. 34. *Rien culp. Culp. Prest.* M. 19 Hen. VI. 73. *Rien culp. Prest. Culp, &c. Prest.* Add. after T. 20 Hen. VI. 24. A striking instance of the use of the phrase "*Cul. prit.* How wilt thou be tried?" occurs in 7 *How. St. Trials*, 80, 160.

CULRACH. In old Scotch law. A species of pledge or cautioner, (*Scotticé back borgh*,) used in cases of the replevin of persons from one man's court to another's. *Skene de Verb. Signif.*

CULTURA. L. Lat. In old records. A parcel of arable land. *Blount.* Called a "wong." *Id.*

CULVERTAGE. In feudal law. Confiscation, or forfeiture of lands and goods. *Cowell.*

CUM. Lat. (prep.) With. See *infra*.

CUM, Quum. Lat. (adv.) When; whereas. *Fleta*, lib. 2, c. 64. *Quod cum*; that whereas. *Reg. Orig. passim*. See *infra*, and *Quum*.

CUM ONERE. Lat. With the burden or charge; subject to a charge or incumbrance. 2 *Powell on Devises*, 673, 674. *Transit terra cum onere*; the land passes with the burden or incumbrance. *Co. Litt.* 231 a. *Res transit cum suo onere*; the thing passes with its burden or charge. *Bract.* fol. 47 b, 48. "The captor took *cum onere*." Sir Wm. Scott, 4 *Rob. Adm. R.* 317. *Id.* 347.

CUM PERA ET LOCULO. Lat. With satchel and purse. A phrase in old Scotch law. 1 *Pitcairn's Crim. Trials*, part 2, p. 47.

CUM PERTINENTIIS. L. Lat. With the appurtenances. *Bract.* fol. 73 b. *Fleta*, lib. 3, c. 8. *Id.* c. 14, §§ 10, 11. *Cum eorum et cujuslibet eorum pertinentiis*; with their and every of their appurtenances. *Towns. Pl.* 20. Formal words in conveyances, when written in Latin. "The incident, accessory, appendant and regardant shall, in most cases, pass by the grant of the principal, without the words *cum pertinentiis*, but not *à converso*." *Shep. Touch.* 89. Gibson, C. J. 7 *Penn. St. R.* 488, 491.

CUM TESTAMENTO ANNEXO. L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. 3 *Bl. Com.* 503, 504. See *Administration cum testamento annexo*.

Cum adsunt testimonia rerum, quid opus est verbis. When the proofs of facts are present, what need is there of words. 2 *Bulstr.* 53.

Cum confitente sponte mitius est agendum. A party making a voluntary confession is to be more mercifully dealt with. 4 *Inst.* 66. The word *confitente* in this maxim is sometimes written *confidente*, leading to the erroneous translation: "The behavior ought to be kind to one *confiding* willingly." *Branch's Princ.*

Cum [quum] de lucro duorum queritur, melior est causa possidentis. When the question is as to the gain of two persons, the cause of him who is in possession is the better. *Dig.* 50. 17. 126.

Cum duo inter se pugnantia reperiuntur in testamentis, ultimum ratum est. Where two things repugnant to each other are found in a will, the last shall stand. *Co. Litt.* 112 b. *Shep. Touch.* 451. It is an established rule in the construction of wills, that where two clauses or dispositions are totally irreconcilable, so that they cannot possibly stand together, the clause or disposition which is posterior in a local position shall prevail; it being considered that the subsequent words indicate a subsequent intention. 1 *Powell on Devises*, 858—360, note. 2 *Atk.* 372. See the contrary rule *Ubi pugnantia*, &c.

Cum duo jura concurrunt in una persona æquum est ac si essent in duobus. When two rights meet in one person, it is the same as if they were in two. *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 330. "When two rights do meet in one person, there is no confusion of them, but they remain still, in the eye of the law, distinct, as if they were in several persons." *Id.* 337.

Lord Bacon observes of this maxim that it is "a rule, the words whereof are taken from the civil law, but the matter of it is received in all laws; being a very fine or rule of reason, to avoid confusion." *Id. ibid.* Another form is *Quando duo jura*, &c. (q. v.)

Cum [quum] par delictum est duorum, semper operatur petitor, et melior habetur possessoris causa. Where the fault of two parties is equal, the claimant always has the burden, and the party in possession is deemed to have the better case. *Dig.* 50. 17. 154. See *In pari delicto petitor est conditio possidentis*.

Cum quod ago non valet ut ago, valet quantum valere potest. When that which I do is of no effect as I do it, it shall have as much effect as it can; [i. e. in some other way]. 4 *Kent's Com.* 493. Thus, if the form of a conveyance be an inadequate mode of giving effect to the intention of the party executing it, according to the letter of the instrument, it is to be construed under the assumption of another character, so as to give it effect. *Id. ibid.* In other words, when a deed cannot take effect according to the letter, it will be construed so as it may take some effect or other. *Shep. Touch.* (by Preston,) 87. *Id.* 84. Hence the doctrine of *cy pres*, (q. v.)

CUMBR'. An abbreviation of *Cum*—

bria, Cumberland, in old English pleadings and records. *Towns. Pl.* 147. 1 *Instr. Cler.* 28. *Cowell*, Appendix.

CUNA. L. Lat. In old English law. A tub or vat for brewing. *Spelman. Domed. tit. Cestria*, cited *ibid.* This is said, in *Cowell*, to be a mis-reading for *cuva*, Angl. *keeve*, *keever*. *Blount*, however, admits the word, and says, a brewing vessel is still called in Cheshire, a *cump*.

CUNA. L. Lat. In old English law. Coin. *Co. Litt.* 207. *Cunagium*; coinage. *Towns. Pl.* 62, 260.

CUNADES. Span. In Spanish law. Affinity; alliance; relation by marriage. *Las Partidas*, part 4, tit. 6, l. 5.

CUNEARE. L. Lat. In old English law. To coin. *Spelman*, voc. *Cuneus*. *Cuneatus*; coined. *Towns. Pl.* 180.

Cuneator; a coiner. *Id.* 260.

CUNEUS. L. Lat. In old English law. The iron die with which metallic money is coined. *Spelman*.

The money itself, so coined; coin. *Id. Towns. Pl.* 260.

The place of coinage; a mint. *Spelman. Cowell. Blount*.

CUR. A common abbreviation of CURIA. 1 *Instr. Cler.* 9.

CUR. ADV. VULT. An abbreviation of *curia advisari vult*, frequent in the reports. See *Curia advisari vult*.

CURA. Lat. Care; charge; oversight; guardianship.

In the civil law. A species of guardianship which commenced at the age of puberty, (when the guardianship called *tutela* expired,) and continued to the completion of the twenty-fifth year. *Inst.* 1. 23. pr. *Id.* 1. 25. pr. *Hallifax, Anal.* b. 1, c. 9. *Brissonius*. Called also *curatio*, (q. v.)

CURA ANIMARUM. L. Lat. In ecclesiastical law. Care of souls, or cure of souls, (q. v.) as it is frequently rendered.

CURARE. Lat. [from *cura*, q. v.] In the civil law. To take care of; to have charge of; to attend to. *Brissonius*.

To cure or heal. *Id.*

CURATE. [from *cura*, q. v.] In ecclesiastical law. Properly, an incumbent who has the cure of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his cure. *Brande*.—An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence, or as his assistant, as the case may be. 1 *Bl. Com.* 898. 8

Steph. Com. 88. It is the lowest degree in the church. *Id.*

CURATIO. Lat. [from *curare*, to take care.] In the civil law. Guardianship; the office of a curator, (q. v.) *Brissonius*. The power of taking charge of, and managing the property and affairs of those who are unable or incompetent to do it themselves. *Heinecc. El. Jur. Civ.* lib. 1, tit. 23, § 266. *Bract.* fol. 28 b. *Brissonius*. See *Cura*.

CURATOR. Lat. [from *curare*, to take care, which from *cura*, q. v.] In the civil law. One who is appointed to take care of any thing for another; one who is appointed to administer the estate of any person who is not legally competent to manage it himself; a guardian. *Heinecc. El. Jur. Civ.* lib. 1, tit. 23. In a general sense, the office of a curator is not distinguishable from that of a procurator. *Id.* §§ 265, 266.

A species of guardian, (Latino-Gr. *κονστροφ*;) appointed for minors from puberty to the age of twenty-five. *Inst.* 1. 23. pr. *Dig.* 26. 3, 5, 6. Lunatics, spendthrifts, idiots, deaf and dumb and incurably sick persons, were also put under the charge of a curator. *Inst.* 1. 23. 3, 4. See *Tutor*. *Bracton* uses this term indifferently with *custos*. *Bract.* fol. 28 a, b. In Scotch law, it is used in the general sense of guardian. *Bell's Dict.* In the Roman law, it was applied to a variety of public officers, such as *curator civitatis*, and *reipublicæ*; *curatores corporum, operum, viarum*, &c. See *Brissonius*.

A person appointed to take care of the estate of an absentee. *Civ. Code of Louisiana*, Art. 50.

CURATOR AD HOC. Lat. In the civil law. A guardian for this [purpose]; a special guardian. *Civ. Code of Lou.* Art. 57, 372.

CURATOR BONIS. Lat. In the civil law. A guardian or trustee appointed to take care of property in certain cases; as for the benefit of creditors. *Dig.* 42. 7.

In Scotch law, the term is applied to guardians for minors, lunatics, &c. *Bell's Dict.* "*Curator bonis* appears to have considerably more authority by the law of Scotland, than the committee of the estate of a lunatic has in England." Lord Campbell, 6 *Bell's Appeal Cases*, 240.

CURATOR IN (or AD) LITEM. Lat. In the civil law. A guardian for the purpose of a suit; or one appointed to prose-

cute or defend a suit for another. *Inst.* 1. 23. 2. Hence the modern phrase *guardian ad litem*, (q. v.)

CURATORY. In Scotch law. Guardianship. *Bell's Dict.*

CURATRIX. Lat. A female guardian. *Bract.* fol. 28 b. Still used. 4 *Grattan's R.* 257.

CURE OF SOULS. [Lat. *cura animarum.*] In English ecclesiastical law. The spiritual charge of a parish, including the ordinary and regular duties of an officiating clergyman. Sometimes abbreviated to "cure." Ecclesiastical benefices are either "with cure," as parsonages, vicarages, &c. or "without cure," as prebends, &c. *Hale's Anal.* sect. xxv.

CUREE. L. Fr. Charged with; having charge or care of. *Une benefice curee des almes.* *Yearb.* T. 9 Edw. III. 14.

CURFEW, Curfeu. [L. Fr. *couvre feu*; from *couvrir*, to cover, and *feu*, fire; L. Lat. *ignitegium.*] In old English law. A bell which rang at eight o'clock in the evening, in the time of William the Conqueror, by which every person was commanded to rake up, or cover his fire, and put out his light. *Termes de la Ley.* *Cowell.* *Spelman.* 4 *Bl. Com.* 420. *Tomlins.* This was abolished by Henry I., but the term was long applied in England to the ringing of any bell customarily towards bed-time. *Stow's Annals.* *Cowell.* See *Ignitegium.* In Scotland, (where it was called *curphour*,) in the time of James I. this bell was to be rung in boroughs at nine in the evening, which hour, in the time of James VI., was changed to ten. *Barringt. Obs. Stat.* 153, 154.

CURGE. L. Fr. Runs. *Litt.* sect. 120.

CURIA. Lat. In the Roman law. A division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. *Dionys. Hal.* ii. 23. *Spelman.*

The place or building in which each *curia* assembled to offer sacred rites. *Varro de Ling. Lat.* iv. 32. *Spelman.*

The place of meeting of the Roman senate; the senate house. *Id.*

The senate house of a province; the place where the *decuriones* assembled. *Cod.* 10. 31. 2. See *Decurio.*

CURIA. L. Lat. In old European law. A court; the palace of a sovereign, (*regia seu palatium principis*). *Spelman.*

A sovereign's household, (*familia*) or court. *Id.*

A judicial tribunal, (*forum juridicum*) or court, held in the sovereign's palace. *Id.*

Any judicial tribunal; a court of justice. *Id.*

The court of a feudal superior or lord. *Feud. Lib.* 2, tit. 1, 2, 22.

The civil or secular power, as distinguished from the church. *Spelman.*

The residence of a noble; a manor, or chief manse; the hall of a manor. *Id.*

The court of a manor. *Fleta*, lib. 2, c. 72, § 1. A lord's court, as being held in his manor. *Cowell.* See *Curia baronia.*

The persons, or feudatory and other tenants, who did suit and service at the lord's court. *Cowell.*

The governing body of a municipality or city. *Steph. Lect.* 108.

A piece of ground, or area attached to a house, or within which a house is built; a yard, court or court-yard, (*atrium seu area cuiusvis habitaculi*). *Spelman.* *LL. Edw. Conf.* c. 6. *Bract.* fol. 76, 222 b, 335 b, 356 b, 358. See *Curia claudenda.*

A parsonage house or manse. *Cowell.* *Kennett's Par. Ant.* 205.

* * *Curia* is derived by *Spelman* from the Gr. *κρῖτα*, which, among other significations, had those of a meeting, or place of meeting (*concio et concionis locus*), for public business, whether of a judicial character or otherwise; the sovereign power, &c. According to the same writer, it was not used in the sense of a judicial tribunal among the Germans, Franks, Anglo-Saxons and other northern nations of Europe, before the tenth century; the received words being *mallum*, *placitum*, *gemotum*, &c. Afterwards, however, it came into general use, and constantly occurs in the old books, and in reports down to the present day, in the sense of court. *Bracton* frequently uses *curia* and *judicium* to signify the same thing. *Dies in curia.* *Bract.* fol. 342 b. *Dies in iudicio.* *Id.* fol. 362 b. *Cum in iudicio comparuerint.* *Id.* fol. 296 b. *Antequam in curia comparuerit.* *Id.* fol. 365. Strictly, however, *curia* signifies the place where the court is held; *judicium*, the proceedings there. See *Judicium.*

CURIA. L. Lat. In old practice. Court; the court. A word often used in the older reports, (and not yet wholly obsolete,) as introductory to the statement of the opinion or judgment of the court.

Latch, 133. So, in the phrases *per curiam*, and *curia contra*, (qq. v.)

CURIA ADMIRALITATIS. L. Lat. The court of admiralty. *Clerke's Prax. Cur. Adm.* 2.

CURIA ADVISARI VULT. L. Lat. The court will be advised, i. e. take time to deliberate. A phrase used in the reports (and commonly abbreviated to *cur. adv. vult.*) to denote the suspension of judgment by the court, after hearing argument, for the purpose of further deliberation; as where the point to be determined was one of novelty or difficulty. It was equivalent to an adjournment of the cause, and the terms *adjournatur*, et *adjournatur*, sed *adjournatur*, are employed in the older reports to signify the same thing. See *Adjournatur*. Its meaning is very clearly shown in the following passages from the old books: *Le court disoit q'il voult estre avis sur le matter*; the court said that it would be advised upon the matter. *Yearb.* H. 3 Hen. VI. 34. *Nous volons estre avises*; we will be advised. H. 4 Hen. VI. 6. M. 19 Hen. VI. 44. *Id.* 31. "The court took time to be advised." 1 *Leon.* 187. "The court took time to consider." 10 *Mod.* 441.

The name of an entry made in the record of a cause by way of continuance, where judgment was not given at the same term in which the cause was argued. See *Continuance*.

CURIA BARONIS or **BARONUM.** L. Lat. In old English law. A court baron. *Fleta*, lib. 2, c. 53. See *Court baron*.

CURIA CHRISTIANITATIS. L. Lat. In old English and Scotch law. A court christian; an ecclesiastical court. *Fleta*, lib. 5, c. 28, § 8. *Reg. Maj.* lib. 2, c. debet autem, 37; lib. 1, c. placitum, 17. *Skene de Verb. Signif.*

CURIA CLAUDENDA. See *De curia claudenda*.

CURIA COMITATUS. L. Lat. In old English law. The court of the county; the county court, or court of the shire, (Sax. *scyregemot*.) in the Saxon times. See *County court*, *Comitatus*.

CURIA DOMINI. L. Lat. In old English law. The lord's court, house or hall, where all the tenants met at the time of keeping court. *Cowell*.

CURIA LEGITIME AFFIRMATA. L. Lat. In old Scotch practice. Court lawfully opened, or opened in due form. A formal phrase used in the captions of

records. 3 *How. St. Trials*, 654. 1 *Pitt. Crim. Trials*, part 1, p. 143. See *Affirmare*.

CURIA MAGNA. L. Lat. In old English law. The great court; one of the ancient names of parliament. *Bract.* fol. 1 b. 9 *Co. pref.* 1 *Bl. Com.* 148.

The king's court, or *aula regis*. *Crabb's Hist. Eng. Law*, 144.

CURIA MAJORIS. L. Lat. In old English law. The Mayor's court. *Calthrop's R.* 152.

CURIA MILITUM. L. Lat. A court so called, anciently held at Carisbrook Castle in the Isle of Wight. *Cowell*.

CURIA PALATHI. L. Lat. In English law. The Palace Court.

CURIA PENTICIARUM. L. Lat. In old English law. A court held by the sheriff of Chester, in a place there commonly called the *Pendice*. *Cowell*.

CURIA PERSONÆ. L. Lat. In old records. A parsonage-house, or manse. *Kennell's Pur. Ant.* 205. *Cowell*.

CURIA PEDIS PULVERIZATI. L. Lat. In old English law. The court of *piepoudre* or *piepouders*, (q. v.) 3 *Bl. Com.* 32.

CURIA REGIS. L. Lat. In old English law. The king's court; the supreme court of the kingdom, established by the Norman princes. *Crabb's Hist. Eng. Law*, 57. Otherwise called *curia magna*, and *aula regis*. *Id.* 144. The *aula regis*, the *bancus*, (afterwards the common bench,) and the *ster* or *eyre*, are all called by Bracton *curiæ regis*, the king's courts; though the first of these was so in a peculiar sense, being held before the sovereign in person, (*coram ipso rege*). *Bract.* fol. 105 b, 361 b, 362.

An ancient name of parliament. *Stat. Mert. pr.* *Bract.* fol. 227 b. The king's council, composed of the earls and barons. *Fleta*, lib. 1, c. 17, § 9.

CURIALITAS. L. Lat. In old Scotch law. Curtesy; curiality; the estate of tenancy by the curtesy. *Skene de Verb. Signif.* *Crag. de Jur. Feud.* lib. 2, c. 19, § 4. 2 *Bl. Com.* 126. 2 *Wooddes. Lect.* 14. See *Curtesy*.

Curiosa et captiosa interpretatio in lege reprobatur. A curious [overnice or subtle] and captious interpretation is reprobated in law. 1 *Bulstr.* 6.

CURNOCK. In old English law. A measure containing four bushels or half a quarter of corn. *Cowell.* *Blount*.

CURRERE. Lat. In old English law. To run; to elapse, as time, with the effect of limitation. *Nullum tempus currit donationi regis vel contra eum in hoc casu*; no time runs against the king's gift, or against him in this case. *Bract.* fol. 56. *Id.* fol. 103. *Currit tempus contra decedens et sui juris contemptores.* Time runs against the slothful and those who neglect their rights. *Id.* fol. 100 b, 101. *Fleta*, lib. 2, c. 60, § 8. *Id.* lib. 4, c. 5, § 12.

To have course or effect. *Currit lex communis sicut prius currere consuevit*; the common law shall have course, as it hath heretofore usually had. *Stat. Marlbr.* c. 7, 9. *Fleta*, lib. 1, c. 12, § 7. *Id.* lib. 2, c. 66, § 11. *Currit lex*; let the law take its course; the law must take its course. 19 *Mod.* 218. Writs are said to run (*currere*).

To run, as a stream. 1 *Shon.* 350. See *Aqua currit*, &c.

CURRIT QUATUOR PEDIBUS. L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuor pedibus*." 1 *W. Bl.* 145.

CURRUS. Lat. In old English law. A chariot or carriage. *Bract.* fol. 168. Distinguished from *carrecta*, and *carrum*.

CURSITOR. L. Lat. and Eng. [*clericus decursus*.] In English practice. An officer or clerk belonging to the court of chancery; whose business is to make out all original writs. These officers are of very ancient institution, and were formerly termed *clerici de secunda forma*, (clerks of the second grade,) and in the statute 18 Edw. III. st. 5, are called clerks of course. *Crabb's Hist. Eng. Law*, 547. The name is derived from the writs *de cursu*, (that is, those original writs which issued in ordinary cases, and of course,) which it was their office to make out. *Hob.* 118. See *De cursu*, *Original writ*.

CURSO. L. Lat. In old records. A ridge. *Cursones terras*; ridges of land. *Conwell*.

CURSUS. Lat. [from *currere*, to run.] In old English law. A course or running, as of water, (*cursus aquæ*). *Cursus carbonum*; a seam of coals. *Towne. Pl.* 43.

A course or practice. *Cursus curiæ*; the practice of a court.

Cursus curiæ est lex curiæ. The practice of a court is the law of the court; [i. e. it

is to be uniformly followed]. 3 *Bulst.* 53. *Broom's Max.* 57, [98—100]. "The course of every court is the law of the court." Lord Brougham, 7 *Bell's Appeal Cases*, 166.

CURT. L. Fr. Court. *LL. Gul. Comp.* ll. 6, 28.

CURTESY, or CURTESY OF ENGLAND. [L. Lat. *curialitas, curialitas Anglicana*; *lex Angliæ*; *curtesia*: L. Fr. *curtesie Denglleterre, ley d'Engleterre*.] An estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seized during the marriage in fee simple or fee tail, provided he had issue by her, born alive during the marriage, and capable of inheriting her estate. 1 *Steph. Com.* 246. In this case he shall, on the death of his wife, hold the lands for his life, as *tenant by the curtesy of England*. *Id.* *ibid.* 2 *Bl. Com.* 126. *Bract.* fol. 438. *Litt. sect.* 25. *Co. Litt.* 29 b. It is a species of freehold estate, not of inheritance, and equally known to English, Scotch and American law. 4 *Kent's Com.* 27, 28. *Ersk. Inst.* b. 3, tit. 9, § 52. 1 *Hilliard's Real Prop.* 110, et seq. *United States Digest*, Dower and Curtesy.

* * * The early writers on English law agree in considering this kind of estate as peculiar to the law of *England*, and hence it is frequently called by them, and in old statutes and records, a tenancy *per legem Angliæ, par la ley Denglleterre*, (by the law of England,) or, as expressed by Britton, *titre de fraunktenement en le heritage en femme, par reason d' la ley Denglleterre Glawe*. lib. 7, c. 18. *Bract.* fol. 437 b, 438. *Britt.* c. 51, fol. 132. *Id.* c. 66, fol. 167 b. *Fleta*, lib. 6, c. 55. *Litt. sect.* 25. *Stat. Westm.* 2, c. 3. *Finch's Law*, b. 2, c. 3, ad fin. 1 *Steph. Com.* 246, note (o). In the Year Books, it is described both as tenancy *par la curtesie d' Engleterre*, and *par la ley D' Engleterre*. P. 2 Edw. III. 8. T. 3 Edw. III. 14. M. 4 Edw. III. 58. T. 8 Edw. III. 7. M. 9 Edw. III. 29. It has been shown by modern writers, that this peculiarity did not, in fact, exist; a similar kind of estate being found to have prevailed in Normandy, as well as among the ancient Germans, and even in the Roman law. *Grand Coutume*, c. 119. *Lindembrog. LL. Alam.* tit. 92. *Cod.* 6. 60. l. 2 *Bl. Com.* 126. *Crat. de Jur. Feud.* lib. 2, c. 19, sect. 4. *Wright on Tenures*, 193, 194. *Bisset on Estates*, 26. 4 *Kent's Com.* 28. Its actual derivation from these

sources, however, not having been made out, the correctness of the ancient opinion as to its local origin in England, seems to be not materially affected. 2 Wooddes. Lect. 13.

As to the meaning of the term *curtesy* itself, it is by some writers understood in its ordinary sense of *favor*, (*gratia*), the estate being enjoyed rather by favor of law, (*ex gratia legis*), than as a matter of right. Spelman, voc. *Jus curialitatis*. Skene de Verb. Sign. voc. *Curialitas*. 2 Wooddes. Lect. 13. Sir J. Jekyll, 2 P. Wms. 703. Others trace it to *curtis* or *curia*, (a court,) as denoting an attendance by the husband on the lord's court, in capacity of his vassal or tenant, in respect of his wife's land. 2 Bl. Com. 126. Bisset on Estates, 37. Others, adopting the same etymology, give it a different application, considering tenant by *curtesy* as signifying as much as tenant by the courts of England. Crabb's Hist. Eng. Law, 86. 2 Chitt. Bl. Com. 126, note. But this last seems a strained derivation.

CURTILAGE. L. Fr. and Eng. [L. *curtilagium*; from *curtis*, a dwelling, or *curtillum*, the enclosed area around it, and *agere*, to do; as being the place where the business of the house is done: or from *curtis*, or *curtillum*, solely: or from Fr. *cour*, court, and Sax. *leagh*, place.] A yard, court-yard, or piece of ground lying near to a dwelling-house, and included within the same fence.* Defined by Spelman, as the space included within the enclosure of a court, (*quicquid spatii intra septum curtis seu curtilli clauditur*) and distinguished from ground lying in open fields, (*quod discinctum jacet in campania, hoc est, in campis*). Gloss. voc. *Curtilagium*. Lib. Rames. sect. 271, cited *ibid*. This ancient sense of the word is still retained. 1 Crabb's Real Prop. 76. In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon, which is usually enclosed within the *general fence* immediately surrounding a principal messuage and out-buildings, and yard closely adjoining to a dwelling-house; but it may be large enough for cattle to be levant and couchant therein. 1 Chitt. Gen. Pract. 175.

A garden; a kitchen-garden, (*hortus olitorius*). Lindewode Prov. tit. *De decimis*, c. *Sancta*, § *Omnibus*. Spelman. Thel. Dig. lib. 8, c. 1, ¶ 6. Shep. Touch. 94. Spelman denies this to be the proper mean-

ing of the term, and cites an old record showing *garden* to be distinct from *curtilage*. Blount cites an old statute to the same effect, and is followed by Jacob. It certainly is not the modern meaning. 1 Chitt. Gen. Pr. ub. sup. Cowell confounds the two meanings.

* * The radical signification of this term, as clearly shown by Spelman, is an *enclosed* space about a house, an area actually *fenced in*, (*intra septum*). Fleta uses the terms *curia* (court,) and *curtilagium*, in such connection as to show that their meaning was similar, applying both to the arrangement of ground about a farm-house. Fleta, lib. 4, c. 20, § 6. Neither Cowell, Blount nor Jacob, however, admit the idea of enclosure into their definitions. And see Shep. Touch. 94.

In the late case of *The People v. Taylor*, (2 Michigan, (Gibbs) R. 250,) the signification of the term "curtilage" was made the subject of very particular consideration. The court (Wing, J.) seemed disposed to depart from the strict idea of an actual enclosure, as maintained in England, and held, on this point, the following language: "It is perhaps unfortunate that this term, which is found in the English statutes, and which is descriptive of the common arrangement of dwellings and the yards surrounding them in England, should have been perpetuated in our statutes. It is not strictly applicable to the common disposition of enclosures and buildings constituting the homestead of the inhabitants of this country, and particularly of farmers. In England, the dwellings and out-houses of all kinds are usually surrounded by a fence or stone wall, enclosing a small piece of land, embracing the yards and out-buildings near the house, constituting what is called the court. This wall is so constructed as to add greatly to the security of the property within it; but, as such precautionary arrangements have not been considered necessary in this country, they have not been adopted. Hence the difficulty, in this case, of giving a correct interpretation to the statute, and of judging whether the barn, as described by the witness, was within what was understood by the legislature as the *curtilage* of the house." The real question in the case seems to have been, whether a curtilage was necessarily a *single* enclosure, and whether it might not include *more than one yard* near the dwelling-house. The court inclined to think it might. The

barn in reference to which the question in the case arose, stood eighty feet from the dwelling-house, and nearly in range with it east and west; it stood in a yard or lane, with which there was a communication from the house by a pair of bars. The space of ground occupied by both buildings, and the buildings, were such as are usually included in one enclosure in England. The court held the barn to be within the curtilage. 2 *Michigan R.* 251—253. See 1 *Carr. & K.* 84, cited *ibid.*

In a recent case in Massachusetts, the English idea of a *curtilage* as a space actually enclosed, was more strictly adhered to. The court defined the word to mean, in law, a fence or enclosure of a small piece of land around a dwelling-house, usually including the buildings occupied in connection with the house; and held that this enclosure may consist wholly of a fence, or partly of a fence and partly of the exterior side of buildings so within the enclosure. *Commonwealth v. Barney*, 10 *Cushing's R.* 480.

CURTILAGIUM. L. Lat. In old English law. Curtilage; a, or the curtilage. *Spelman.* See *Curtilage*.

CURTILES TERRÆ. L. Lat. In old English law. Court lands. *Cowell.* See *Court lands*.

CURTILLUM. L. Lat. [from *curtis*, q. v.] In old English law. An area or space lying within the enclosure of a dwelling-house, (*infra curtis, seu habitaculi seipimentum*). *Spelman.* *LL. Inæ*, c. 40, cited *ibid.* *Spelman* prefers the derivation from the Fr. *courtil*, a space behind a house, as a green-house or garden, (*area sub aversa ædium parte; viridarium, hortus*); answering to the Sax. *weorth*.

CURTINER. L. Fr. To improve; to cultivate; to fence in. *Britt.* c. 55.

CURTIS, Curta, Curtus. L. Lat. [from Gr. *κωρίς, κωρὶς*, Lat. *cors, cohors*, a cage, enclosure, or enclosed space.] In old European law. A space or area about a house, (*area circa ædes*). *Spelman.* *Leo Marsic. Casin.* lib. 1, c. 36, cited *ibid.*

A garden. *Id.* See *Curtilage*.

An enclosure or pound for securing animals. *LL. Burgund.* tit. 23, § 1.

A house or dwelling; a country house, (*casa, vel habitaculum rusticum*); a court. *Spelman.* *Si mulier foras curte sua exierit*; if a woman shall go out of her house. *LL. Burgund. Add.* 1, tit. 5, § 2. *Si quis ad battalia curte sua exierit*; if any one go

out of his court to battle. 3 *Bl. Com.* 320, note (m). *Canem custodem domus sine curtis.* L. *Salic.* tit. 6, § 3.

A dwelling-house, with land adjoining, or belonging to it; a manse or manor. *Spelman.* *Lindewode Prov. Angl.* lib. 3, tit. *De decim. c. Sancta*, § *Omnibus*.

The palace, household or court of a sovereign. *Spelman.* *Jornandes de Reb. Geticis*, c. 34, cited *ibid.*

The seat or residence of a nobleman. *Spelman.*

A village or town, as distinguished by the residence of a noble. *Spelman.*

A judicial tribunal; a court of justice; anciently called *placitum*. See *Court*. *Curtis regia*; the royal court. *LL. Longob.* lib. 1, tit. 2, l. 9. Judicial tribunals were called *courts*, because originally held in the *courts*, (*in curtibus, id est, adibus*), that is, the palaces and residences of kings and nobles. *Spelman.* The vassals who sat as judges in these courts of their lord were called peers of the court, (*pari curtis*, q. v.) *Id.* *Feud. Lib.* 1, tit. 2, 3, 4, *et passim*. *Curia*, however, was the Latin word generally used to denote a court. See *Curia*.

CUSTA. L. Lat. In old English law. Cost or costs. *Spelman*, voc. *Custagium*.

CUSTAGIUM, [pl. CUSTAGIA; from Fr. *coust, coustange*.] L. Lat. In old English law. Cost or costs; expenses of judicial proceedings. *Spelman.* *Fleta*, lib. 2, c. 64, § 21. Sometimes translated *costages*.

CUSTANTIA. L. Lat. [Fr. *coustange*.] Costs. See *Custagium*.

CUSTODE ADMITTENDO. L. Lat. See *De custode admittendo*.

CUSTODE AMOVENDO. L. Lat. See *De custode amovendo*.

CUSTODES, [pl. of Custos.] Lat. In the Roman law. Guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given. *Tayl. Civ. Law*, 193.

CUSTODES, [pl. of CUSTOS.] Lat. In old English law. Keepers; guardians. *Custodes pacis*; conservators of the peace. 1 *Bl. Com.* 349, 350. *Custodes placitorum coronæ*; keepers of the pleas of the crown. Supposed to be the same with *coroners*. *Crabb's Hist. Eng. Law*, 150. *Custodes libertatis Angliæ autoritate parliamenti*; keepers of the liberty of England, by the authority of parliament. The style in which writs and other judicial proceedings were made out in England during the grand re-

bellion, from the execution of King Charles I. till Oliver Cromwell was declared protector. *Termes de la Ley. Wharton's Lex. Whishaw.*

CUSTODIA. Lat. In the civil law. Custody; confinement; confinement in a public prison. *Dig. 50. 16. 224.*

CUSTODIA. Lat. [from *custos*, a keeper or guardian; L. Fr. *gard, garde.*] In old English law and practice. Keeping; custody. In *arcta et salva custodia*; in close and safe custody. 3 *Bl. Com.* 415.

Ward, or guard; the duty of keeping guard. 1 *Bl. Com.* 356. *Custodia castris*; castle-guard. *Mag. Cart.* 9 Hen. III. c. 20.

Wardship or guardianship; (*custodia pupillorum*). *Reg. Orig.* 161, *et seq. Spelman. Bract.* fol. 87. *Co. Litt.* 76 a. *Custodia comitatus*; the wardship of a county. 3 *Salk.* 322.

A ward of a city or town. *Spelman.*

CUSTODIRE. Lat. In old English law. To keep. *Tam negligenter et improvide custodivit ignem suum, quod domus combusta fuit*; so negligently and carelessly kept his fire, that the house was burnt. 5 *Co.* 14.

CUSTODY. [from Lat. *custodia*, q. v.] Care; keeping.

Detainer under arrest; confinement; imprisonment.

CUSTOM. [L. Fr. *coutume, custome*; Lat. *consuetudo*.] A law, not written, established by long usage, and the consent of our ancestors. *Termes de la Ley. Cowell. Bract.* fol. 2. If it be universal, it is common law; if particular to this or that place, it is then properly *custom*. Holt, C. J. 1 *Show.* 5, case 8. 3 *Salk.* 112. The requisites to make a particular custom valid are, (1) it must have been used so long that the memory of man runneth not to the contrary; (2) it must have been continued; (3) peaceable; (4) reasonable; (5) certain; and (6) compulsory, that is, not left to the option of any man whether he will use it or not. (7) Customs must also be consistent with each other. 1 *Steph. Com.* 56—58. 1 *Bl. Com.* 76—78. *Co. Litt.* 110 b. 3 *Ad. & Ell.* 554. See 2 *Hilliard's Real Prop.* 153. *Broom's Max.* [712]. *United States Digest*, Custom and usage. The distinction between custom and prescription is, that the former is common to many; the latter peculiar to an individual. *Termes de la Ley.* In other words, custom is local; prescription is personal. 4 *Co.* 32. 2 *Bl. Com.* 263. See *Consuetudo*.

Custom also signifies a toll or tribute, and the service of a tenant to his lord, but in these senses it usually occurs in the plural. See *Customs*.

Customes serra prise stricte. Custom shall be taken [is to be construed] strictly. *Jenk. Cent.* 83.

CUSTOM OF MERCHANTS. [L. Lat. *consuetudo mercatorum*.] A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which, under the name of *lex mercatoria*, or *law merchant*, has been engrafted into, and made a part of the common law. 1 *Bl. Com.* 75. 1 *Steph. Com.* 54. 2 *Burr.* 1226, 1228. According to Mr. Stephen, this branch of the law is distinguished by a separate name, only because it applies to the particular subjects in question, principles different from those which the common law ordinarily recognises, and because these principles were engrafted into the municipal system of England by gradual adoption from the *lex mercatoria*, or general body of European usages in matters relative to commerce. 1 *Steph. Com.* 54.

Lord Holt said, in *Cranlington v. Evans*, (1 *Show.* 5, case 8,) that he knew no distinction between *lex mercatoria* and *consuetudo mercatorum*. "The custom of merchants is the law merchant." Foster, J. 1 *W. Bl.* 299. The custom or usage of trade is the law of that trade; and to make it obligatory, it must be ancient,—sufficiently so, at least, to be generally known,—certain, uniform and reasonable. *United States Digest*, Custom and usage, and cases there cited.

CUSTOMARY ESTATES. In English law. Such estates as owe their origin to the customs of different manors, and belong to such persons as hold their lands by copy of court roll, or tenures of the like kind. 2 *Crabb's Real Prop.* 985, § 2354.

CUSTOMARY FREEHOLD. In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 *Steph. Com.* 212, 213, and note. 2 *Bl. Com.* 100, 149. 1 *Crabb's Real Prop.* 700—712, §§ 920—923. 1 *Man. Gr. & Scott*, 940.

CUSTOMARY SERVICE. In English

law. A service due by custom from one person to another; as the service of doing suit to another's mill, where the persons resident in a particular place, by usage time out of mind, have been accustomed to grind their corn at a certain mill. 3 *Steph. Com.* 509. 3 *Bl. Com.* 235.

CUSTOMARY TENANTS. [L. Lat. *customarii tenentes*.] In English law. Such tenants as hold by the custom of the manor, as their special evidence. *Termes de la Ley*. Copyholders belong to this class. 2 *Bl. Com.* 147, 148. See *Copyholder*.

CUSTOMS. [L. Lat. *custuma, custuma, custumia*; from Fr. *coustum*; *consuetudines*.] The duties, toll, tribute or tariff payable upon merchandise exported and imported, and forming a part of the public revenue. 1 *Bl. Com.* 313, 314, note, 315. 2 *Steph. Com.* 575, *et seq.*

These imposts seem to have been called *customs* from having been paid from time immemorial. 1 *Chitt. Bl. Com.* 314, note. According to Lord Coke, customs or duties were called in old legal Latin, *custumæ* and *consuetudines* indiscriminately. 2 *Inst.* 58. 4 *Inst.* 29, 30. See *Duties*. But according to Blackstone, *consuetudines*, whenever it occurs, means usages. 1 *Bl. Com.* 314. See 2 *How. St. Trials*, 412, 413.

CUSTOMS OF LONDON. Particular customs within the city of London, with regard to trade, apprentices, widows, orphans and a variety of other matters. 1 *Bl. Com.* 75. 1 *Steph. Com.* 54, 55.

CUSTOMS AND SERVICES. [L. Lat. *consuetudines et servitia*.] In old English law. Services which the tenants of lands, under the feudal law, owed to their lords, and which, if withheld, the lord might resort to the writ of customs and services (*breve de consuetudinibus et servitiis*.) to compel them. *Tomlins*. See *De consuetudinibus et servitiis*.

CUSTOS. Lat. In old English law. A keeper, or protector. See *infra*.

A guardian. *Mag. Cart.* c. 4. *Bract.* fol. 87, 161. *Co. Litt.* 76 a.

A magistrate; the warden of a city. *Fleta*, lib. 2, c. 64, § 2. The *capitalis custos* or *custos major*, (chief warden,) seems to have answered to the mayor. *Id. ibid.*

CUSTOS BREVIUM. L. Lat. In English practice. Keeper of the writs. A principal clerk belonging to the courts of

King's Bench and Common Pleas, whose office was to receive and keep all the writs, returned into the court, and also all records of nisi prius. *Termes de la Ley. Cowell. Blount.* 1 *Tidd's Pr.* 43, 44. 1 *Archb. Pr.* 11. His title in the Common Pleas, was *custos brevium domini regis de banco*. *Towns. Pl.* 211. This office was abolished by statute 7 Will. IV. and 1 Vict. c. 80.

CUSTOS FERARUM. Lat. A game-keeper. *Towns. Pl.* 265.

CUSTOS HORREI REGII. L. Lat. Protector of the royal granary. 2 *Bl. Com.* 394.

CUSTOS MARIS. L. Lat. In old English law. Warden of the sea. The title of a high naval officer among the Saxons, and after the Conquest, corresponding with admiral. *Rot. Pat.* 6 *Johan. m.* 8. *Rot. Pat.* 8 *Hen. III.* p. 1, m. 3, 4. *Cl. 9 Hen. III.* m. 15, &c. *Rot. Pat.* 48 *Hen. III.* p. 1, m. 3. *Hale's Hist. Com. Law*, 36, note. See *Admiral, Capitaneus*.

Warden of the fleet. 2 *Mod.* 321.

CUSTOS PLACITORUM CORONÆ. L. Lat. In old English law. Keeper of the pleas of the crown. *Bract.* fol. 14 b. Cowell supposes this office to have been the same with the *custos rotulorum*. But it seems rather to have been another name for coroner. *Crabb's Hist. Eng. Law*, 150. *Bract.* fol. 136 b. The title itself indicates a criminal, rather than a civil jurisdiction. See *Corona, Placita corona*. In the writ *de odio et atia*, these officers are mentioned as sitting with the sheriff in the county court. *Reg. Orig.* 133 b.

CUSTOS ROTULORUM. L. Lat. Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the quorum in the country where appointed, and is the principal civil officer in the county. 1 *Bl. Com.* 349. 4 *Id.* 272. *Lamb. Eiren.* lib. 4, c. 3, p. 373. *Bacon's Works*, iv. 316. 3 *Steph. Com.* 37. 4 *Id.* 337. *Cowell*.

CUSTOS SPIRITUALIUM. L. Lat. In English ecclesiastical law. Keeper of the spiritualities. He who exercises the spiritual jurisdiction of a diocese, during the vacancy of the see. *Cowell*.

CUSTOS TEMPORALIUM. L. Lat. In English ecclesiastical law. Keeper of the temporalities. He to whose custody a vacant see or abbey was committed by

the king, as supreme lord; who, as a steward of the goods and profits, was to give account to the escheator, and he into the exchequer. *Cowell*.

CUSTOS TERRÆ L. Lat. In old English law. Guardian, warden or keeper of the land. *Mag. Cart. Johan. c. 4. Id. 9 Hen. III. c. 4.*

CUSTUMA L. Lat. [from Fr. *coustum*, toll or tribute.] In old English law. Customs, duties or imposts. 1 *Bl. Com.* 314. *Crabb's Hist. Eng. Law*, 255. According to Spelman, who is supported by the Register, the proper word is *customæ*. *Reg. Orig.* 138.

CUSTUMA ANTIQUA SIVE MAGNA L. Lat. Ancient or great customs. Duties formerly payable in England under the statute of *Confirmatio Chartarum*, by every merchant, as well native as foreign, on wool, sheepskins or woollens, and leather exported. 1 *Chitt. Bl. Com.* 314, and note. 4 *Inst.* 29. *Stat. Confirmatio Chartarum*, c. 11, [7.] 3 *Salk.* 339. *Hale de Jur. Mar.* pars 3, c. 5.

CUSTUMA PARVA ET NOVA L. Lat. Small and new customs. Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the alien's duty, and was first granted in 31 Edw. I. 1 *Bl. Com.* 314. 4 *Inst.* 29.

CUSTUS L. Lat. In old English law. Cost; charge; expense; costs; charges. *Glanv. lib. 1, c. 32. Ad custum tuum*; at your cost. *Reg. Orig.* 2 b. *Ad custum ejus*. *Bract. fol. 234. Ad custus proprios*; at her own charges. *Fleta, lib. 1, c. 15, § 3. Primi custus*; the first costs. *Id. lib. 2, c. 73, § 3.*

CUTH, Couth. Sax. Known; knowing. *Uncuth*; unknown. See *Couthutlaugh, Uncuth*.

CUTPURSE [L. Lat. *bursarum scissor*; L. Fr. *cynsour de burse*, q. v.] In old criminal law. An offender answering to the modern pickpocket. *Fleta, lib. 1, c. 36, § 11.*

CY L. Fr. Here. *W. et A. sa feme, que cy sont*; W. and A. his wife, who are here. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510. *Cy apres*; hereafter. *Cy avant*; heretofore. *Kelham*.

CY, Cye, Ci, Si, Sy. L. Fr. So; as. *Cy languishant ou cy decrepyte que il ne poit, &c.*; so sick or so feeble that he cannot, &c. *Litt. sect. 434. Ne soies cye*

clere; do not be so clear (confident). *Dyer*, 31, (Fr. ed.) *Cy bien*; as well. *Cy court*; so speedily. *Cy que*; so that. *Kelham*.

CY PRES L. Fr. So near; as near; as near as possible. *Donques doit le feoffee, per la ley, faire estate a la feme, cy pres le condition, et auxi cy pres l'entent de le condition que il poit faire, &c.* Then ought the feoffee, by the law, to make an estate to the wife, as near the condition, and also as near the intent of the condition, as he can make it, &c. *Litt. sect. 352.* "With an intention of going there if it should be possible, if not, of going *cy pres*." 1 *Campb.* 537.

CY PRES, DOCTRINE OF. The doctrine of construing written instruments as near to the intention of the parties as possible. *Shep. Touch.* (by Preston,) 83, 84. It is most commonly applied to the construction of wills, and is only another name for the general principle, (sometimes called the rule of *approximation*), of carrying into effect the testator's intention as nearly as may be according to the rules of law. *Lewis on Perpetuity*, 427. 2 *Story's Eq. Jur.* § 1169. This doctrine has been made a part of the statute law of the state of New-York. 1 *Rev. St.* [748,] 740, § 2. *Savage, C. J.* 14 *Wendell's R.* 308.

The doctrine of *cy pres* may be more particularly stated thus: that where there is a general and also a particular intention apparent on a will, and the particular intention cannot take effect, the words shall be so construed as to give effect to the general intention. *Broom's Maxims*, 244, [434.] *Lewis on Perpetuity*, 426. 2 *Smith's Lead. Cas.* 294. Thus, in case of a donation for charitable purposes, if it be incapable of being literally acted upon, or if its literal performance would be unreasonable, a decree will be made for its execution *cy pres*, that is, in some method conformable to the general object, as closely as possible to the specific design of the donor. 3 *Steph. Com.* 230. 2 *Story's Eq. Jur.* § 1169, *et seq.* 2 *Kent's Com.* 288. So, where limitations are made by way of remainder to the children of unborn persons, which are generally void for remoteness, there are cases in which the courts in England have so moulded, or put such construction upon the limitations, as that the unborn parent may take an estate tail, and the property vest in his issue by descent, by which all objection of remoteness is obviated. *Lewis on Perpetuity*, 426. It is this last descrip-

tion of cases which most commonly call forth the application of the doctrine of *cy pres*. *Fearne on Contingent Remainders*, 204. *Butler's note, ibid.* *Lewis on Perpetuity*, 426—454. 4 *Kent's Com.* 508, notes. *Coster v. Lorrillard*, 14 *Wendell's* 265.

CYEINS. L. Fr. Here; in; within. *Yearb. M.* 19 Hen. VI. 35.

CYMETER. L. Fr. A burial place; a cemetery. *Britt. c.* 43.

CYMMORTH, (pl. *Cymmorthau*.) Brit. In old English law. An assembly for the purpose of assistance. *Stat. 4 Hen. IV. c.* 27. *Barringt. Obs. Stat.* 360.

CYNEBOTE. Sax. [from *cyn*, kin, or relationship, and *bot*, a satisfaction.] In Saxon law. A pecuniary composition for killing a relative; the same with *cenegild*, (q. v.) *Spelman, voc. Cenegild*.

CYNK. L. Fr. An old form of writing cinque. *Reg. Orig.* 72, *regula*.

CYNSOUR DE BURSE. L. Fr. A cutpurse; (*celuy que la bourse coupe*). *Britt. c.* 15.

CYRICBRYCE. Sax. [from *cyric*, church, and *bryce*, a breaking, or breach.] In Saxon law. The act or crime of breaking into a church, [church breach]. *LL. Eccl. Canut. Regis. Blount*.

CYRICSCEAT. Sax. [from *cyric*, church, and *seat*, a tribute.] In Saxon law. A tribute or payment due to the church. *Cowell. Spelman, voc. Circset*.

CYROGRAFFE. L. Fr. A chirograph, (q. v.) *Britt. c.* 21.

CYROGRAPHARIUS. L. Lat. In old English law. A cyrographer; an officer of the *Bancus*, or court of Common Bench. *Fleta, lib. 2, c.* 36.

CYROGRAPHER OF FINES. See *Chirographer of fines*.

CYROGRAPHUM. L. Lat. In Saxon and old English law. The name of a deed or charter among the Saxons. 1 *Reeves' Hist. Eng. Law*, 10. See *Chirographum*.

A charter, written in two parts, with the word *cyrographum*, in capital letters between, through which it was divided by cutting. *Id.* Called also *charta cyrographata*. *Bract. fol.* 34.

One of the parts of a fine. *Finis et cyrographum. Bract. fol.* 50, 59, 194. See *Chirograph*.

CYTE. L. Fr. Cited. 1 *And.* 229.

CYTEE. L. Fr. City; a city. *A toutes nos cytees; to all our cities. Conf. Chartar.* 25 *Edw. I.*

D.

D. The initial letter of the word *Digesta*, or *Digestum*, used by some civilians, in citing the *Digesta*. *Taylor's Civ. Law*, 24.

D is sometimes used, in the old books, instead of T, at the end of Latin words; as *capud*, for *caput*.

D. E. R. I. C. An abbreviation used for *De ea re ita censuere* (concerning that matter have so decreed,) in recording the decrees of the Roman senate. *Taylor's Civ. Law*, 564, 566.

DA, *Dea*. L. Fr. *Yea. Kelham*. DABIS? DABO. Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. *Inst.* 3. 16. 1. *Bract. fol.* 15 b.

DACRUM, *Dakrum, Dacra*. L. Lat. In old English and Scotch law. A daker, or dakir; a measure of certain commodities. A daker of hides (*coriorum*) consisted of ten skins; a daker of gloves consisted of ten pairs; a daker of horse-shoes (*ferrosum equorum*) consisted of twenty shoes. *Fleta, lib. 2, c.* 12, § 3. *Unius dacre corii firmiti*; of one daker of tanned hides. 1 *Pitt. Crim. Trials*, part 2, p. 21.

DAERIA. L. Lat. In old English law. A dairy. *Fleta, lib. 2; c.* 87.

DAGGE. A kind of gun. 1 *How. St. Trials*, 1124, 1125.

DALE and SALE. Fictitious names of places, used in the English books, as examples. *Perk. ch.* 2, sect. 152. "The manor of *Dale* and the manor of *Sal*, lying both in *Vale*." *Bacon's Arg. Case of Revocation of Uses*. See *Perk. ch.* 3, sect. 230. "Overdale and Netherdale." *Keilw.* 167.

DALUS. *Dailus, Dayla*. L. Lat. In old English law. A dale, valley or low place. 1 *Mon. Angl.* 680. 2 *Id.* 211.

A balk, or narrow slip of pasture left between the ploughed furrows in arable land. *Cowell*.

DAMAGE. L. Fr. and Eng. [L. Lat. *damnum*, q. v.] A loss, hurt, or hindrance sustained by a party in his estate or person. * *Cowell. En son damage*; in his damage; doing him damage. *Britt. c.* 27.

DAMAGE CLEER. L. Fr. and Eng. [q. d. *damage de cler*; clerk's compensation; L. Lat. *damna clericorum*.] In old English practice. A sum of money or fee which a plaintiff recovering damages in the courts of King's Bench and Common Pleas

anciently had to pay to the prothonotary, or chief officer of the court, before he could have execution. It was abolished by statute 17 Car. II. c. 6. *Termes de la Ley*. Cowell.

DAMAGE FEASANT (or **FAISANT**). L. Fr. [L. Lat. *damnum facientes*.] Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, &c. 3 *Bl. Com.* 7, 211. *Tomlins*. The phrase seems to have been introduced in the reign of Edward III. in place of the older expression *en son damage*, (in *damno suo*). *Crabb's Hist. Eng. Law*, 292. See *Damage*.

DAMAGER. L. Fr. To injure; to oppress. *Kelham*.

DAMAGES. L. Fr. and Eng. [L. Lat. *damna*, q. v.] In general practice. A pecuniary compensation or satisfaction for an injury, given usually at law, but sometimes in equity.

In pleading. A sum of money claimed by the plaintiff in a personal or mixed action, as a compensation for the injury complained of.* 1 *Chitt. Pl.* 395. 1 *Tidd's Pr.* 440. See *To lay damages*. The word, as actually used in declarations, is always in the singular, (damage, *damnum*.) the clause in which the sum is claimed beginning—"To the damage," &c. 1 *Tidd's Pr.* 446. See *Ad damnum*.

In practice. A sum of money assessed by a jury, on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party.* 2 *Bl. Com.* 438. *Co. Litt.* 257 a. 2 *Tidd's Pr.* 869, 870. See *General damages*, *Special damages*, *Double damages*, *Treble damages*, *Liquidated damages*, *Excessive damages*, *Punitive damages*, *Measure of damages*.

The word *damages* was formerly used and understood in two senses; one, called by Lord Coke the proper and general signification, which included costs of suit; the other, called the strict or relative sense, which was exclusive of costs. 10 *Co.* 116, 117. *Litt. sect.* 431. *Co. Litt.* 257 a. Lord Ellenborough, 9 *East*, 299. The latter is the modern meaning.

DAMAIOUSE. L. Fr. [L. Lat. *dam-nosus*.] In old English law. Causing damage or loss, as distinguished from *torcenouse*, wrongful. *Britt.* c. 61.

There is no equivalent for this word in English, although a single word of the kind

is much needed to express with precision the idea or quality of mere *damage*, as distinguished from *wrong* or injury.

DAMNA. L. Lat. [plur. of *damnum*, q. v.] In old English law and practice. Damages, inclusive of costs of suit. 10 *Co.* 116 b. *Co. Litt.* 257 a.

Damages, exclusive of costs. 10 *Co. ub. sup.* *Damna in duplo*; double damages. *Stat. Westm.* 2, c. 26.

DAMNARE, *Dampnare*. Lat. In old English law. To condemn. See *Damnatus*.

To damage; to injure. *Fleta*, lib. 3, c. 16, § 36.

DAMNATUS. Lat. [from *damnare*, to condemn.] In old English law. Condemned; prohibited by law; unlawful. *Damnatus coitus*; an unlawful connection. *Bract.* fol. 5. *Qui ex damnato coitu nascuntur inter liberos non computantur*. They who are born of an unlawful connection are not reckoned among children. *Id. ibid.* *Co. Litt.* 8. 2 *Bl. Com.* 247.

DAMNER, *Dampner*. L. Fr. To condemn. *Dampner a la mort*; to condemn to death. *Britt.* c. 5.

DAMNI INJURIE ACTIO. Lat. In the civil law. An action for injurious damage. An action given by the Aquilian law against one who injuriously (i. e. intentionally, without right, or from carelessness,) killed the slave or beast of another. *Inst.* 4. 3. pr. 2, 3. *Id.* 4. 8. 4.

DAMNOSA HEREDITAS. Lat. In the civil law. A losing inheritance; an inheritance that was a charge, instead of a benefit. *Dig.* 50. 16. 119. A term sometimes applied to the property of a bankrupt. Lord Ellenborough, 7 *East*, 335.

DAMNOSUS, *Dampnosus*. L. Lat. [from *damnum*, q. v.] In old English law. That which produces loss, as distinguished from *injuriousus*, or that which works a wrong. *Bract.* fol. 231 b. *Fleta*, lib. 4, c. 26, § 2.

DAMNUM, *Dampnum*. Lat. In pleading and old English law. Damage; loss. *Ad damnum* (q. v.); to the damage. *Ad grave dampnum*; to the grievous damage. *Fleta*, lib. 2, c. 48, § 2. *Damnum facientes*; doing damage. *Rev. Jud.* 27. *Pro damno facto*; for damage done. *Bract.* fol. 156. *Dicere poterit captor quod juste cepit averia sua, quia illa invenit in damno suo*; the taker may say that he justly took his beasts, because he found them in his damage, (i. e. doing him dam-

age.) *Id.* fol. 158. *Fleta*, lib. 2, c. 47, § 25.

The word *damnum*, in this last application, is understood in some of the old dictionaries in the sense of an *enclosure*; but the corresponding phrase of Britton, *en son damage*, conclusively shows the true meaning. See *Damage*. *Esse in damno*; to be in loss; to be a loser. *Bract.* fol. 23 b.

DAMNUM. Lat. In the civil law. *Damage*; the loss or diminution of what is a man's own, either by fraud, carelessness or accident. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 784. *Hallifax, Anal.* b. 2, c. 24. See *Dig.* 50. 17. 151.

DAMNUM ABSQUE INJURIA. Lat. A loss without a wrong; that kind of damage for which an action will not lie.

Non omne damnum inducit injuriam. It is not every loss that produces an injury. *Bract.* fol. 45 b. If a man commence a business, sets up a trade, or opens a school in a particular place, another may do the same thing in the same place, though he draw away the business or the scholars from the other; for though it be a loss (*damnum*) to the latter, it is not coupled with such an injury (*injuria*) as to give a right of action. *Holt, C. J.* 3 *Salk.* 10. 3 *Bl. Com.* 219, 125, 224. 3 *Steph. Com.* 465. 1 *Smith's Lead. Cas.* 131. *Broom's Max.* 93, [150—152]. *Bract.* fol. 235. See *Injuria*. The kind of loss for which an action lies is called by Bracton *damnum injuriosum*, (*injurious damage*). *Bract.* fol. 221, 231 b.

DAMNUM FATALE. Lat. In the civil law. Fatal damage; damage from fate; loss happening from a cause beyond human control, (*quod ex fato contingit*), and for which bailees are not liable; such as shipwreck, lightning and the like. *Dig.* 4. 9. 3. 1. *Story on Bailm.* § 465. *Story, J.* 3 *Story's R.* 349, 357. See *Fatum*.

DAMNUM INFECTUM. Lat. In the civil law. Damage not yet done; apprehended damage, (*damnum nondum factum, quod futurum veremur*). *Dig.* 39. 2. 2.

DAMNUM REI AMISSÆ. Lat. In the civil law. A loss arising from a payment made by a party in consequence of an error of law. 1 *Mackeld. Civ. Law*, 164, § 165.

DAMPNUM. L. Lat. The old form of writing *damnum*. *Stat. Marlbr.* c. 1. *Bract.* fol. 98 b. *Fleta*, lib. 2, cc. 47, 48. So in the derivatives and compounds, *dampnificare, condemnare, indemnus*; and

in the Fr. *dampner, solemnitie*, and other words.

DANEGELD, Danegelt, Danigeld. [L. Lat. *Danigeldum, Danegeldus*; from *Dane*, and Sax. *geld*, money or tribute.] In old English law. The Danish tax or tribute; money for the Danes, (*tributum Danicum*). *Spelman.* A tax of one shilling, and afterwards two shillings, upon every hide of land in England, first imposed upon the Saxons in the reign of king Ethelred, for the purpose of bribing the Danes to desist from their depredations, and afterwards made permanent for the purpose of maintaining an armed force to defend the coast from any invading enemies; thus becoming one of the chief branches of the royal revenue. *Spelman, voc. Danigeldum. Crabb's Hist. Eng. Law*, 61. *Termes de la Ley. Hale's Hist. Com. Law*, 162, note, (Runnington's ed.)

DANEION, Δανειον. Gr. In the civil law. Interest; debt. *Nov.* 106.

DANEIEMA, Δανεισμα. Gr. In the civil law. A thing loaned; a debt. *Nov.* 4, c. 1.

DANEIETHZ, Δανειστης. Gr. In the civil law. A creditor. *Nov.* 4, c. 1. *Id.* c. 3, § 1.

DANELAGE, Denelage. [L. Fr. *Danelae*; L. Lat. *Danelaga, Denelaga*; from *Dane*, and Sax. *lage*, law.] Dane law; the Danish law. A system of laws introduced by the Danes on their invasion and conquest of England, and which was principally maintained in some of the midland counties, and also on the eastern coast. 1 *Bl. Com.* 65. 4 *Id.* 411. 1 *Steph. Com.* 42. According to *Spelman*, it was the prevailing law from the time of King Edgar to that of Edward the Confessor, and was preferred by William the Conqueror to all the other systems which he found in England, so that he came very near imposing it upon the whole kingdom, (*parum absuit ne toti Angliæ imposuisset*), and this partiality was owing to the fact of the Normans being descended from the same stock with the Danes. *Spelman, voc. Lex Danorum.*

DANGERIA. L. Lat. In old English law. A payment in money made by forest tenants to the lord, that they might have leave to plough and sow in time of pannage or mast feeding. *Cowell.* Called, in some places, *lyef-geld, lyef-silver*, and *lef-silver. Id.*

DANGERS OF THE SEA. See *Perils of the Sea*. The phrases "the dangers of the seas," "the dangers of navigation,"

and "the perils of the seas" employed in bills of lading, are convertible terms. 1 *Abbotts' Adm. R.* 348.

DANO. Span. In Spanish law. Damage; the deterioration, injury or destruction, which a man suffers with respect to his person or his property, by the fault (*culpa*) of another. *White's New Recop.* b. 2, tit. 19, c. 3, § 1. See *Id.* b. 2, tit. 10, c. 12.

DANS. L. Fr. In; within. See *Dans*.

DANUM, Danu. Contractions of **DAMNUM**. See *Contraction*.

DAPIFER. Lat. [from *daps*, a feast, and *ferre*, to carry.] In old European law. A steward, either of a king or lord; a seneschal. Originally, a domestic who waited on the table. Called also *domesticus, megadomesticus, oconomus, major domus, senescallus, scalcus, gastaldus*. *Spelman*.

DARE. Lat. To give; to cause a thing to be effectually his who receives it; (*rem accipientis facere cum effectu*). *Bract.* fol. 11, 38 b. *Fleta*, lib. 3, c. 3, § 2. See *Do, Give*.

DAREIGNER. See *Deraigner*.

DAREYNE. See *Darreine*.

DARREIN, Darreine, Darreyne, Darreyne, Darrain, Darraigne. L. Fr. Last. *Dareyne* *volunté*; last will. *Britt.* c. 28.

DARREIN CONTINUANCE. L. Fr. In practice. The last continuance. See *Continuance, Puis darrein continuance*.

DARREIN PRESENTMENT. L. Fr. In old English law. The last presentment. See *Assise of darrein presentment*.

DASH. In old pleading. A small horizontal line or mark made or drawn over certain letters, to denote a contraction. In some instances, it was drawn *through* the letters. The letters *b, h, and l*, were dashed through the top; the letter *p*, through the bottom. 1 *Inst. Cler.* 2, 6, 15. See 8 *Mod.* 327.

DAT. An abbreviation of *Data* or *Datum*, in the clause at the end of the constitutions of the Roman emperors, showing the day and month when it was *given*, and in whose consulship. In other words, the date of the constitution. See the *Code of Justinian, passim*, and see *infra, Date*.

DAT. An abbreviation of *Data*, or *Datum*, (qq. v.) in old instruments. The *Magna Charta* of 9 Hen. III. concludes thus: *Dat' apud Westmon' undecimo die Februarii, anno regni nostri nono*; **GIVEN**

at Westminster, on the eleventh day of February, in the ninth year of our reign. Private instruments concluded in the same way. *Dat' London, tali die, anno supra-dicto. Fleta*, lib. 2, c. 64, § 3. See *Litt.* sect. 371.

DATA. L. Lat. [from *dare*, to give.] In old practice and conveyancing. The date of a deed or charter; the time when it was *given*, that is, executed. The *Magna Charta* of King John concludes thus: *DATA per manum nostram, in prato quod vocatur Runingmed' inter Windlesorum et Stanes, quinto decimo die Junii, anno regni nostri septimo decimo*. **GIVEN** by our hand, in the meadow which is called Runingmede, between Windsor and Stanes, the fifteenth day of June, in the seventeenth year of our reign. *Data apud Saleford*; given at Saleford. 2 *Bl. Com.* Appendix, No. I. See *Date, Given*.

The date of a writ; the time when it was *given*, that is, granted or issued. *Bract.* fol. 176. *Britt.* c. 48. *Reg. Orig.* 26, note. *Tempus datæ*; the time of the date. *Fleta*, lib. 4, c. 22, § 10. See *Id.* c. 10, §§ 3, 5. *Item videndum erit si tempore datæ aliqua fuerit causa impetrandi vel nulla, et ideo respicienda erit data, si forte deleta fuerit vel in aliquo mutata*; also, it must be seen if, at the time of the date, there were any cause of [ground for] obtaining it or none; and therefore the date must be looked to, if perchance it have been erased, or altered in any respect. *Bract.* fol. 188. In modern practice, this clause is called the *teste*, (q. v.)

DATE. L. Fr. Given. *Dyer*, 115.

DATE. L. Fr. and Eng. [from Lat. *data, datum, or datus*, qq. v.] In conveyancing. That part of a deed or writing which expresses the day of the month and year in which it was made or *given*. 2 *Bl. Com.* 304. 2 *Hilliard's Real Prop.* 333. 1 *Ld. Raym.* 84. *Tomlins*.

* * The formation of this now ordinary word may be clearly traced to the emphatic word of the clause by which the *time* and *place of execution* of an instrument were anciently expressed, usually at the conclusion:—**DATA** (or **DATUM**) *apud—tali die, &c.* (**GIVEN** at—on such a day, &c.; or, in French, *Done à — &c.*) This practice, again, may be further traced as far back as the constitutions of the Roman emperors, which, as they appear in the *Code of Justinian*, usually conclude with a similar clause, giving the day and month, some-

times the place, and the names of the consuls for the year, thus: DATA V. Kal. April. Lampadio et Oreste VV. CC. Cons. DAT. XIII. Kal. Decemb. CP. Justino et Opilione Cons. DAT. Idib. Aug. Constantinop. Constantio II. et Constante Cons. See *Cod. passim*. The Novels were dated in a similar manner. The abbreviation DAT. was sometimes still further abbreviated to D. From this emphatic Latin word DATA (or datum,) the L. Fr. word *date* seems to have been immediately formed as a name for the whole clause, and afterwards adopted as an English word of more general application. That the earliest use of *date* was as a French word, appears from the following passages of Britton: *Et pur ceo est bone cautele pur ceuz que fount faire chartre, que date soit mys del jour, et del lieu, et del an*; and therefore it is a good precaution for those who are about to make a charter, [deed,] that the *date* be put of the day, and of the place and of the year. *Britt. c. 39. Par defaute de date est le breffe abatable et vicious*; by defect of the *date* is the writ abatable and faulty. *Id. c. 48*. The first of these passages is also important as showing the time when dates in deeds began to come into use.

The use of this *datum* clause, or *date*, was common to a great variety of instruments, public as well as private. See the date of Magna Charta, under *Dat* and *Data*. And see *Done*, *Donees*. The style of the literal translation "Given," &c. is still preserved in public instruments requiring greater formality of style, such as proclamations of state: "Dated," &c. being appropriated to private writings. See *Datum*, *Done*.

DATIO. Lat. [from *dare*, to give.] In the civil law. A giving, or act of giving. *Datio in solutum*; a giving in payment; a species of accord and satisfaction. Called in modern law, *dation*. *Bouvier*.

Appointment or assignment. *Datio judicis*; appointment of a *judex* to hear and determine a cause. *Hallifax, Anal. b. 3, c. 9, num. 19*. See *Do*, *Dico*, *Addico*. *Datio tutoris*; the appointment of a tutor or guardian by the prætor or a magistrate, where none had been provided by will or by law. *Inst. l. 20. Heinecc. Elem. Jur. Civ. lib. 1, tit. 20*.

DATIVE. [L. Lat. *dativus*; L. Fr. *datif*.] In old English law. In one's gift; that may be given and disposed of at will and pleasure. Applied to an officer in the

sense of *removeable*, as distinguished from *perpetual*. *Stat. 9 Ric. II. c. 4. Stat. 45 Edw. III. cc. 9, 10. Cowell*.

In the civil law. That which is given by the magistrate, as distinguished from that which is cast upon a party by the law or by a testator. *Bouvier*. A *dative executor* (Fr. *executor datif*), answers to the administrator of the common law. *Code of Louis. Art. 1671, 1672*.

DATUM. L. Lat. [from *dare*, to give.] In old conveyancing. Given; dated. *Co. Litt. 6 a. Datum apud London*; given at London. *Perk. ch. 2, a. 153 B*.

A *date*. *Cujus datum est in Dom. Capitulari*; the date of which is in the Chapter House. *Dyer, 26 b. See Date*.

DATUR digniori. It is given to the more worthy. 2 *Ventr. 268. Broom's Maz. 49.*

DATUS. Lat. [from *dare*, to give.] In old conveyancing. Date or giving. *Dies datus*; the day of the date. 2 *Salk. 413*. Translated "giving," by Holt, C. J. 12 *Mod. 194. Cujus datus*, the giving of which was. *Id.*

DAY. [Lat. *dies*; Fr. *jour*.] A period of time consisting of twenty-four hours, and including the solar day and the night. *Co. Litt. 135 a. Bract. fol. 264*. An artificial period of time, computed from one fixed point to another, without any reference to the natural distinction between day and night; and hence very expressively termed by Bracton an *artificial day*.* *Efficitur dies qui dicitur artificialis, ex die precedente et nocte subsequente. Bract. ubi sup. Britt. c. 80. Fleta, lib. 5, c. 5, § 31*. A day, in contemplation of law, usually comprises all the twenty-four hours, beginning and ending at twelve o'clock at night. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences. 2 *Bl. Com. 141. 1 Steph. Com. 265*. This is otherwise called, as among the Romans, a *civil day*. *Adam's Rom. Ant. 358. See Dies, Dies juridicus, Sunday*.

A period of time of variable length, beginning at day-break and ending with twilight, as distinguished from night.* See *Night*. This has been termed by some of the old writers, an artificial day. *Termes de la Ley. Cowell. Bell's Dict.* But the epithet *artificial* rather belongs to the civil day (*supra*), than this, which is a natural period, being merely the solar day (*infra*)

extended to its utmost limits. A *solar day*, according to Lord Coke, begins at sunrise and ends at sunset. *Co. Litt.* 135 a. This is the same with the *natural day* of the Romans. In modern science, the term *solar day* has quite a different meaning, denoting the interval between two noons. *Brande.*

DAY. [L. *dies*.] In practice and pleading. A particular time assigned or given for the appearance of parties in court, the return of writs, &c. See *Days in bank*, *Dies datus*, *Return day*. It was only by means of *days* thus given, that a suit anciently could be continued in court; and where a day was not given, it was equivalent to a discontinuance, and the suit came to an end. A defendant was said to go without day, (*sine die*) when he was finally dismissed from court. See *Continuance*, *Sine die*, *Without day*.

DAYBREAK. [L. *Lat. lux diei ortus*.] *Cro. Jac.* 106.

DAYLIGHT. [L. *Lat. diurnum lumen, crepusculum*.] That portion of time before sunrise, and after sunset, which is accounted part of the day (as distinguished from *night*), in defining the offence of burglary. 4 *Bl. Com.* 224. *Cro. Jac.* 106. See *Burglary*, *Night*.

DAY RULE. In English practice. A rule granted (or rather a certificate of the Court of Queen's Bench having granted a rule) to a prisoner, permitting him to go beyond the *rules*, (that is, the limits) of the prison for the purpose of transacting his business. So called, because granted only for a *day*; the prisoner being required to return to the prison at or before nine o'clock of the evening of the day for which the rule was granted. 2 *Archb. Pr.* 131. *Archb. New Pract.* 529. 1 *Tidd's Pr.* 374. *Sewell's Law of Sheriff*, 69.

DAYS IN BANK. [L. *Lat. dies in banco*.] In practice. Certain stated days in term appointed for the appearance of parties, the return of process, &c., originally peculiar to the Court of Common Bench, or Bench (bank) as it was anciently called. *Fleta*, lib. 2, c. 35. 3 *Bl. Com.* 277. See *Bank*, *Bench*, *Dies communes in banco*.

DAYS OF GRACE. In mercantile law. *Days* (usually three in number,) allowed by the custom of merchants, for the payment of bills of exchange and promissory notes, (except such as are payable on demand, or where no time of payment is ex-

pressed,) beyond the day expressed for payment on the face of them; the bill or note not actually becoming payable until the third day of grace. 3 *Kent's Com.* 100, 104, and notes. 2 *Steph. Com.* 164. *Chitty on Bills*, 374. *Story on Bills*, §§ 333—343.

DAYS OF GRACE. [L. *Lat. dies gratia*, or *amoris*.] In old practice. Three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the *quarto die post*. 3 *Bl. Com.* 278. See *Quarto die post*. This practice has been traced, through the feudal law, to the customs of the ancient Germans. *Id. ibid.* See *Dies gratia*.

DAYS MAN. [from *day*, judgment, according to some.] An arbitrator, umpire or elected judge. *Cowell*.

DAYWERE. In old English law. A term applied to land, and signifying as much arable ground as could be ploughed up in one day's work. *Cowell*.

D'C'US. A contraction of *DICTUS*. *D'c'um*, of *Dictum*. 1 *Inst. Cler.* 9.

DE. Lat. and L. Lat. Of; about, concerning, respecting. *De donis*, (q. v.) of gifts. *De mercatoribus*, (q. v.) of merchants. *De homicidio*. *Bract.* fol. 120 b. *De terra*. *Id.* 112. *De actionibus*. *Id.* 98 b.

Of; affecting. *Si quis appellatus est de vita et membris*; if one is appealed [accused] of a matter affecting life and limbs. *Bract.* fol. 112 b.

Of; about, against. *De quo queritur*; of whom complaint is made. *Id.* fol. 182.

Of; by, arising from. *De gratia, magis quam de jure*; of favor or grace, rather than of right. *Id.* fol. 118 b. *De necessitate*. *Id.* fol. 144 b. *De consuetudine*. *Id.* fol. 161 b.

Of; from, out of. *De quolibet burgo*; out of every borough. *Id.* fol. 109 b. *Disseysina de libero tenemento*; disseisin of freehold. *Id.* fol. 121 b.

Of; for, to. *Plegii de proseguendo*; pledges for prosecuting, pledges to prosecute. *Fleta*, lib. 1, c. 21, § 1. *Plegii de parendo juri*; pledges to obey the law. *Id.* lib. 2, c. 60, § 36.

Of; among, from. *Quilibet de populo*; any one of the people. *Bract.* fol. 118 b.

Of; in consequence of. *Obiit de plaga*; he died of the wound. *Id.* fol. 138.

Of; out of, issuing or derived from.

Redditus de tenemento; rent of a tenement. *Id.* fol. 184. *De corpore*; of the body. 7 Co. 41 b.

Of; from, under. *Tenere de rege*; to hold of the king. *Bract.* fol. 106.

Of; by, upon. *Felonia de se*; felony of himself. *Id.* fol. 150.

Of; out of, with. *Fiat messuagium de bosco communi*; a messuage shall be built of common wood. *Id.* fol. 97 b.

Of; as to, in regard to. *De hoc. Id.* fol. 113, *et passim.* *Si de hoc constare possit*; if it can be made to appear in regard to this. *Id.* fol. 131.

Of; in. *De termino*; of the term. *Id. passim.* *De itinere. Id. De placito,* (q. v.)

Of; on. *De materia*; on the subject. *Id.* fol. 130, *et passim.*

Of; in the sense of the genitive case. *Aliquo tempore de die vel de nocte*; at any time of the day or night. *Id.* fol. 119. *Seysina de hæreditate*; seisin of the inheritance. *Id.* fol. 130. *Hominibus de Ierne-weve, et ballivis de Doneviz*; to the men of Yarmouth, and the bailiffs of Dunwich. *Id.* fol. 118.

Of; in the sense of part or portion. *Nihil restituetur ei de precio quod solvit*; no part of the price that he paid shall be restored to him. *Id.* fol. 151.

Of; in the sense of criminal participation. *Indictari de latrocino*; to be indicted of larceny. *Id.* fol. 132. *Culpabiles de homicidio*; guilty of homicide. *Id.* fol. 121. *De crimine convictus*; convicted of crime. *Id.* fol. 123 b.

From. *De loco in locum*; from place to place. *Id.* fol. 115 b. *De verbo in verbum*; from word to word. *Id.* fol. 111, 146.

For. *Ad respondendum de pretio*; to answer for the price. *Id.* fol. 121 b. *De debito*; for the debt. *Fleta*, lib. 2, c. 63, § 6.

For; in respect of. *De bono et malo*; for good and ill. *Bract.* fol. 143 b.

For; about. *De re agere*; to sue for a thing; to go to law about it. *Id.* fol. 113 b.

By; according to. *De jure gentium*; by the law of nations. *Id.* fol. 102 b. *De jure naturali*; by the law of nature. *Id.* fol. 120.

By; with. *De consilio curiæ*; by the advice or direction of the court. *Id.* fol. 185 b. *De consensu partium*; by consent of parties. *Id.* fol. 206 b.

By; during. *De nocte vel de die*; by night or by day. *Id.* fol. 184. *De clara die*; by daylight. *Id.* fol. 137 b.

In. *De æquitate*; in equity. *Id.* fol. 96 b. *De facto*, (q. v.); in fact.

With. *De denariis suis emptum*; bought with his money. *Id.* fol. 198 b.

* * * The foregoing are the most important of the numerous senses in which this very common particle occurs in the language of the old law, and in technical phrases still in use. In the titles of the old English statutes, and of writs original and judicial, as well as in the ordinary formulæ of the courts, its prevailing sense is of, that is, *about, concerning or respecting*. Another very common use of it, (as of the law French *de*;) is to express the genitive case, either where the words employed do not admit of the necessary inflection for that purpose, or where it was supposed to convey the meaning with greater aptness and precision. The examples of the different significations are taken, it will be seen, almost without exception, from Bracton, whose style may be considered as exhibiting the purest specimen of legal Latinity to be met with among the ancient writers on the law of England.

DE. L. Fr. Of; about, concerning. *De homicides. Britt.* c. 5. *De attornea. Id.* c. 126.

Of; out of, by. *Plus d'grace q'd'droit*; more of favor than of right. *Id.* c. 69.

Of; out of, composed of. *Que est fait del jour et de la nuyt suauante*; which is made up of the day and the following night. *Id.* c. 80.

Of; from, under. *Que il tiendra de luy*; which he shall hold of him. *Id.* c. 68.

Of; in the sense of the genitive case. *Brefe de droit*; writ of right. *Id. passim.* *En roule de coroner*; in the roll of the coroner. *Id.* c. 24, 25.

Of; in the sense of connection or relation. *De son saunk*; of his blood. *Id.* c. 23.

Of; in the sense of criminal participation. *Coupables de felonie*; guilty of felony. *Id.* c. 24.

Of; in the sense of character or quality. *De fraunk estate*; of free estate. *Id.* c. 49.

Of; in the sense of attainment. *De age. Id.* c. 74. *De pleyne age*; of full age. *Id. ibid.*

Of; in the sense of possession. *Seisine de son heritage*; seisin of his inheritance. *Id. ibid.*

Of; out of; in the sense of dispossession. *Engelle de son fraunk tenement*; ejected of his freehold. *Id.* c. 42.

Of; in the sense of privation. *Delayer de leur droit*; to delay of their right. *Id.* c. 84.

To; (with the infinitive). *Plegges de suer*; pledges to prosecute. *Id.* c. 24. *Plegges de respondre et de retourner*; pledges to answer and to return. *Id.* c. 28. *Somouns de estre*; summoned to be. *Id.* *ibid.* *Destreintz de vener*; distrained to appear. *Id.* *ibid.* *Jugement de estre treyne et pendu*; judgment to be drawn and hanged. *Id.* c. 23.

From; (in time). *De ceo jour en avant*; from this day forward. *Id.* c. 68. *De jour en jour.* *Id.* c. 78.

From; (in place). *Exyl de nostre royaume*; banishment from our realm. *Id.* c. 16.

From; in the sense of origin or derivation. *Descent de un cep*; descent from one stock. *Id.* c. 70.

For; in return for. *Dues de ma portion*; due for my portion. *Id.* c. 68.

By. *De un baron a une femme*; by a husband to a wife. *Id.* c. 102.

By; according to. *De ley*; according to law. *Yearb.* T. 5 Edw. III. 6.

In. *De play [or ple] de terre*; of (in) a plea of land. *Britt.* c. 123. *De fee.* *Id.* *passim.*

On. *De coste*; on the side. *Id.* c. 119. *De part piere, come de part le mere*; on the side of the father, as on the side of the mother. *Id.* c. 89. -

With. *De dirs enkes*; with different inks. *Id.* c. 48.

With; by. *De la consente*; with the consent. *Id.* c. 24.

DE ACQUIRENDO RERUM DOMINIO. Lat. Of (about) acquiring the ownership of things. *Dig.* 41. 1. *Bract.* lib. 2, fol. 8 b.

DE ADMENSURATIONE DOTIS, Breve. L. Lat. Writ of admeasurement of dower. A writ which lies where a widow has assigned to her, by the heir or his guardian, more land as dower than rightly belongs to her; commanding the sheriff to cause the dower to be admeasured. *Reg. Orig.* 171. *F. N. B.* 148, *F. G.* 3 *Bl. Com.* 383. 1 *Steph. Com.* 254. See *Admeasurement of dower.*

DE ADMENSURATIONE PASTURÆ. See *Admeasurement of pasture.*

DE ADVISAMENTO CONSILII

NOSTRI. L. Lat. With, or by, the advice of our council. A phrase used in the old writs of summons to parliament. *Reg. Jud. Appendix*, 7, 8. *Crabb's Hist. Eng. Law*, 240.

DE ÆQUITATE. L. Lat. In equity. *De jure stricto, nihil possum vindicare, de æquitate tamen, nullo modo hoc obtinet*; in strict law, I can claim nothing, but in equity this by no means obtains. *Fleta*, lib. 3, c. 2, § 10.

DE ÆTATE PROBANDA, Breve. L. Lat. Writ of (about) proving age. An old writ which lay to the escheator or sheriff of a county, to summon a jury to inquire whether the heir of a tenant *in capite*, claiming his estate on the ground of full age, was, in fact, of age or not.* *Reg. Orig.* 294. *F. N. B.* 257.

DE ALEATORIBUS. Lat. About gamblers. *Dig.* 11. 5.

DE ALLOCATIONE FACIENDA, Breve. L. Lat. Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs,) in their accounts, certain payments made by them.* *Reg. Orig.* 192.

DE ALTO ET BASSO. L. Lat. [*L. Fr. de haut et de bass.*] Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. *Cowell*, voc. *Alto et basso.* *Stat. Walliæ*, 12 *Edw.* 1. 2 *Reeves' Hist. Eng. Law*, 96. See *De haut et de bass.*

DE AMBITU. Lat. Concerning bribery. *Ambitus* (bribery) was the subject of several of the Roman laws; as the *Lex Aufidia*, the *Lex Pompeia*, the *Lex Tullia*, and others. See *Ambitus*.

DE AMPLIORI GRATIA. L. Lat. Of more abundant or especial grace. *Towns. Pl.* 18.

DE ANNO BISSEXTILI. Of the bissextile or leap year. The title of a statute passed in the 21st year of Henry III. which in fact, however, is nothing more than a sort of writ or direction to the justices of the Bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the *essoins de malo lecti*, and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 *Reeves' Hist. Eng. Law*, 266. See *Bissextile*.

DE ANNUA PENSIONE, Breve. L. Lat. Writ of annual pension. An ancient writ by which the king having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ. *Reg. Orig.* 265 b, 307. *F. N. B.* 231 G. *Termes de la Ley.*

DE ANNUO REDDITU, Breve. L. Lat. [L. Fr. *breve d'annuitie.*] A writ of annuity. A writ for recovering an annuity whether payable in money or goods. *Reg. Orig.* 158 b. *Fleta*, lib. 2, c. 63, § 3. *F. N. B.* 152 A. 2 *Reeves' Hist. Eng. Law*, 258.

DE APOSTATA CAPIENDO, Breve. L. Lat. Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him, and deliver him again to his abbot or prior. *Reg. Orig.* 71 b, 267. *F. N. B.* 233, 234.

DE APPELLATIONIBUS. Lat. About appeals. *Dig.* 49. 1.

DE ARBORIBUS CÆDENDIS. Lat. About cutting trees. *Dig.* 43. 27.

DE ARRESTANDIS BONIS NE DIS-SIPENTUR, Breve. L. Lat. An old writ which lay to seize goods in the hands of a party during the pendency of a suit, to prevent their being made away with. *Reg. Orig.* 126 b.

DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT, Breve. L. Lat. An old writ which lay for the apprehension of one who had taken the king's prest money to serve in the war, and hid himself when he should go. *Reg. Orig.* 24 b. *Blount.*

DE ARTE ET PARTE. L. Lat. Of art and part. A phrase in old Scotch law. 1 *Pitcairn's Crim. Trials*, part 2, p. 55. See *Art and part.*

DE ASPORTATIS RELIGIOSORUM. L. Lat. Concerning the property of religious persons carried away. The title of the statute 35 Edward I. passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries. 2 *Reeves' Hist. Eng. Law*, 157. 2 *Inst.* 580.

DE ASSISA CONTINUANDA, Breve. See *De continuando assisam.*

DE ASSISA PROROGANDA, Breve. L. Lat. Writ for proroguing an assise. A writ anciently directed to the justices

assigned to take assizes, commanding them to prorogue or postpone an assize to a certain day; where one of the parties could not attend, in consequence of being employed in the king's service. *Reg. Orig.* 207 b, 221 b.

DE ATTORNATO RECIPIENDO, Breve. L. Lat. Writ for receiving an attorney. A writ which anciently lay to the judges of a court, requiring them to receive and admit an attorney for a party. *Reg. Orig.* 26 b, 172, et *passim.* *F. N. B.* 156 D.

DE AUDIENDO ET TERMINANDO. L. Lat. [L. Fr. *d'oyer et terminer.*] For hearing and determining; to hear and determine. The name of a writ, or rather commission, granted to certain justices, to hear and determine cases of heinous misdemeanour, trespass, riotous breach of the peace, &c. *Reg. Orig.* 123, et *seq.* *F. N. B.* 110 B. See *Oyer and Terminer.*

DE AUXILIO. L. Lat. Of aid. *Fleta*, lib. 1, c. 33, § 8.

DE AVERIIS CAPTIS IN WITHER-NAMIUM, Breve. L. Lat. Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a pluries writ of replevin, that the cattle or goods, &c., were eloined, &c.; by which he was commanded to take the cattle of the defendant in withernam, and detain them until he could replevy the other cattle. *Reg. Orig.* 32. *F. N. B.* 73, E. F. See *Withernam.*

DE AVERIIS REPLEGIANDIS, Breve. L. Lat. Writ for replevying beasts. A writ directed to the sheriff, commanding him to cause to be replevied for a party his beasts or chattels, &c., which another had taken and unjustly detained. *Reg. Orig.* 81. Otherwise called a writ *de replegiari de averiis.* *F. N. B.* 68 E. The old writ of replevin. See *Replegiari facias, Replevin.*

DE AVERIIS RETORNANDIS. L. Lat. For returning the cattle. A term applied to pledges given in the old action of replevin. 2 *Reeves' Hist. Eng. Law*, 177.

DE AVO, Breve. L. Lat. Writ of aiel or ayle. *Reg. Orig.* 226.

DE BANCO. L. Lat. Of the Bench. A term formerly applied in England to the justices of the Court of Common Pleas, or Bench, as it was originally styled. *Res justitiaris suis de banco, salutem*; the king to his justices of the Bench, greeting.

Reg. Orig. 19 et passim. Coram justitiariis nostris de banco; before our justices of the Bench. *Id. 168, et passim.* A distinction was made between the phrases *curia nostra de banco*, (our court of the bench,) and *curia de banco nostro*, (the court of our bench); the former being held to signify the Common Bench or Common Pleas, the latter the King's Bench. 1 *Stra.* 302.

DE BENE ESSE. L. Lat. [L. Fr. *del bien estre.*] In old practice and conveying. Of well being; of form; of mere form; of necessary, sufficient or advisable form; of good precaution; of contingent or possible utility or necessity; of conditional or permissive validity. To pass as a matter of form; to be advisable in point of form; to be allowed as of present formal sufficiency, with reference to something future. See *infra*.

In modern practice. Of well being; of present or temporary formal sufficiency; of conditional validity; conditionally. To be good or valid for the present, subject, however, to some future and further proceeding.—A term applied to such acts or proceedings as are done or permitted to take place in an action, but the validity or effect of which depends upon some subsequent act, fact, matter or proceeding. Thus, to declare *de bene esse* in a bailable action, is to declare *on condition* that bail is duly put in, which is expressed by the endorsement of the words "*de bene esse*" on the declaration itself. When bail is put in, the declaration becomes absolute, as in other cases. 1 *Archb. Pr.* 121. 1 *Tidd's Pr.* 419. To examine a witness *de bene esse* is to examine him out of court before the trial, *subject to the contingency* of his being able to attend court at the trial. If he be unable to attend, such examination is good, and the deposition may be read in evidence on the trial. But if he be able to attend, the examination is of no validity, and he must be examined again at the trial in the usual way. *Grah. Pr.* 584. 1 *Burr. Pr.* 212, 447. The common practice of allowing a jury to find a verdict subject to the opinion of the court, is properly a proceeding *de bene esse*, and was anciently so called, as it still is, occasionally. *Dyer*, 55 b, 120. And see 1 *Leon.* 5.

* * The precise literal meaning of this very old, but still common technical expression, (the practical import of which is

well enough understood,) seems to have been a matter of uncertainty and difficulty ever since the time of Cowell, who observes that "*de bene esse* are common Latin words, but their meaning something more dark." This obscurity has doubtless principally arisen from the peculiar structure of the phrase itself, which has rendered a literal translation into English a matter of so much difficulty, that most interpreters, following Cowell's example, have contented themselves with expressing the sense in terms of as close approximation as was supposed practicable. From this circumstance, in connection with the apparent absence of words expressive of the idea of *condition*, now inseparable from its meaning, it has sometimes been supposed to be a fragment of a longer phrase or sentence, which supplied the words (now lost) necessary to complete the sense. A reference to its origin, however, will tend, it is believed, to show that it is not only perfect in itself, and as well constructed as many other phrases in the same technical dialect, but that the material idea of *condition* is still inherent in its emphatic word *bene*, though in a great degree obscured by the more modern application of it. The phrase itself, it may be observed, appears to have been not originally a Latin one, but a very literal translation of the law French *del bien estre*, of which more will be said presently. This, at least, may be assumed from the circumstance that it is not to be found in Bracton,—the great source of most of the technical Latin of the English law,—while in the law French of Britton it not only occurs in form, but its component words are constantly used in connections which throw an important light upon its meaning. Thus, in the chapter *De chartres*, in explaining the forms of the charters or deeds of the time, and what words were advisable or necessary to be used in them, it is said by this author, of certain words, "*Car teles paroles sont plus del bien estre que de la substance de la besoigne, nequedent tout soient teles p'oles mys en escritz, eles ne grevent nient*;" which may be literally rendered, "for such words are more of form (more *de bene esse*) than of necessary substance; nevertheless, if they are put in writings, they do no harm." *Britt.* c. 39. The context here plainly shows the meaning of *del bien estre* to be, of form,—literally, of well being,—which may be considered the original sense; *bien*,

the emphatic word, (like the Latin *bene*), being continually used by the same author to denote *form*, with the modifications of *mere* or indifferent form, (as in the passage quoted,) *sufficient* form, *necessary* form, and *advisable* form, according to its various applications. Thus, a writ is said to be *mye bien conceu*, not well conceived, that is, insufficient in form, or not framed according to a necessary prescribed form. *Britt. c. 48*. So, it is said of certain defendants in a writ,—*ils se mettent bien en Dieu, et en la graund assise*; they put themselves well (that is, in solemn form) on God, and on the grand assise. *Id. ibid.* The corresponding English word "*well*" is constantly used in the old reports, in precisely the same sense; the phrase of the court being,—where a writ or count is objected to as insufficient in form, and held to be good—"the writ (or count) is *well*."

Another modification of this radical idea of *form* expressed by the word *bien*, (and the most important one for the purpose of the present illustration,) is that of *advisable* form. Thus, where the insertion of a word or clause in an instrument is recommended as advisable or prudent, the language of the author already quoted is,—*fait bien a especifier*; it is well to specify, (or *bon est de especifier*, it is good to specify; *est bone cautele*, it is a good precaution,) as distinguished from "*conviendra*," or "*necessarie*," which are the words used where a form is directed as necessary. *Britt. c. 39*. So, in regard to miscellaneous matters of practice, it is constantly said,—*fait bien a prendre gages*, it is well to take pledges or security; *fait bien examiner le verdict*, it is well to examine the verdict; and the like. *Id. cc. 51, 97*. It is from this ancient sense of *bien* or *bene*,—(still accurately expressed by the English "*well*,")—the radical idea of which is, *form observed with reference to future, rather than present use or effect*,—that the phrase *de bene esse* appears to have derived the sense of *conditional validity*, now inseparable from its meaning in practice, and which has already been sufficiently explained.

From the first quotation above given from Britton, it will be seen that *del bien estre* was employed at the remote age of that author, as a phrase in the law of *conveyancing*. As early as the time of Dyer, however, it (or its Latin equivalent, *de bene esse*) seems to have become more exclusively used as a technical term of practice,

and in nearly or quite the sense which the latter phrase now bears. This will appear from the following passages taken from the original law French of Dyer's Reports, which are moreover important as showing about what time the French became exchanged for the Latin form, which has ever since been used. *Al peril de plaintife*, *de bene esse*, *le verdict fuit pris*; at the peril of the plaintiff, *de bene esse*, the verdict was taken. *Dyer, 55 b. Le jurie fuyt charge de bene esse de inquirend' des damages, &c.*; the jury was charged *de bene esse* to inquire of the damages. *Id. 120 a. Et auxi charge*, *de bien esse*, *si le plaintife fuit, &c.*; and also charged, *de bien esse*, if the plaintiff was, &c. *Id. 120 b. Et le jurie charge al request del accessory*, *de bien esse*, *d'enquiere de les abettors, &c.*; and the jury was charged at the request of the accessory, *de bien esse*, to inquire of the abettors, &c. *Id. ibid.*

As to the peculiar structure of the phrase *de bene esse* in a grammatical point of view, it will be sufficient to observe that *esse* and its compounds are constantly employed in law Latin as substantives, in connection with prepositions, adjectives and other parts of speech. *In esse* (in being) will occur as a very common example of this kind of construction, which, though uncouth and barbarous, seems to be necessary in order to express the intended idea with brevity, and at the same time with entire precision. The style of the infinitive, however, is still sometimes observed in translation, as will be seen from the definitions already given. See *Esse*.

DE BIEN ESTRE. See *De bene esse*, *Del bien estre*.

DE BIEN ET DE MAL. L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury; indicating his entire submission to their verdict. *Stat. Glocest. c. 9. 2 Reeves' Hist. Eng. Law, 153*. See *De bono et malo*.

DE BIENS LE MORT. L. Fr. Of the goods of the deceased. *Dyer, 32*.

DE BIGAMIS. L. Lat. Concerning men twice married. The title of the statute 4 Edw. I. st. 3; so called from the initial words of the fifth chapter. 2 *Inst. 272. 2 Reeves' Hist. 142*. It contains only six chapters, and from certain peculiarities in the mode of its passage, it was at one time doubted whether it was properly an act of parliament; but it has

always been received as one. *Id. ibid.* See *Bigamus, Bigamy.*

DE BONE MEMORIE. L. Fr. Of good memory; of sound mind. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510.

DE BONIS ASPORTATIS. L. Lat. For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called trespass *de bonis asportatis*. 1 *Tidd's Pr.* 5. *Broune on Actions*, 402.

DE BONIS NON. An abbreviation of *de bonis non administratis*, (q. v.) 1 *Stra.* 34.

DE BONIS NON ADMINISTRATIS. L. Lat. Of the goods not administered. Where the administration of the estate of an intestate is left unfinished, in consequence of the death, removal, &c., of the administrator, and a new administrator is appointed, the latter is termed an administrator *de bonis non*; i. e. of the goods of the deceased not administered by the former administrator. 2 *Steph. Com.* 243. An administrator of this kind is also sometimes appointed to succeed an executor. *Id. ibid.*

DE BONIS NON AMOVENDIS, *Breve*. L. Lat. Writ for not removing goods. A writ anciently directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his goods and chattels were safely kept *without being removed*, while the error remained undetermined, so that execution might be had of them, &c. *Reg. Orig.* 131 b. *Termes de la Ley*. This seems to have been a local writ.

DE BONIS PROPRIIS. L. Lat. [L. Fr. *de biens propres*.] Of his own goods; of the proper goods of a defendant. A term applied to a judgment rendered against an executor or administrator, awarding execution against his individual property. 2 *Archb. Pr.* 148, 149. 1 *Stra.* 20. 8 *Wheaton's R.* 675.

DE BONIS TESTATORIS, or INTES-TATI. L. Lat. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator. 2 *Archb. Pr.* 148, 149. 8 *Wheaton's R.* 675.

DE BONIS TESTATORIS SI, &c., ET SI NON, &c., DE BONIS PROPRIIS. L. Lat. Of the goods of the

testator, [in the hands of an executor defendant,] if, [he have so much thereof in his hands to be administered,] and if not, [then the costs to be levied,] of the defendant's own goods. One of the forms of judgment in an action against an executor. 2 *Archb. Pr.* 148. 18 *Johns. R.* 502. 19 *Id.* 266.

DE BONO ET MALO. L. Lat. For good and evil. A phrase in old pleadings, by which a party accused or appealed put himself upon a jury. *Et quod inde culpabilis non sit, ponit se super patriam* de bono et malo; and that he is not guilty thereof, he puts himself upon the country for good and evil. *Bract.* fol. 138 b. See *Fleta*, lib. 1, c. 34, § 34. *Ponit se super linguas vestras de hoc, de bono et malo.* *Bract.* fol. 143 b. The same as the Fr. *de bien et de mal*, (q. v.) 4 *Mod.* 289.

The name of a special writ of gaol delivery. Instead of the general commission of gaol delivery under which the judges in England now act on the assizes, it was anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called writs *de bono et malo*. 2 *Inst.* 43. 4 *Bl. Com.* 270.

DE BONO GESTU. L. Lat. For good behaviour.

DE CÆTERO, DE CETERO. L. Lat. [L. Fr. *desormes*.] Henceforth, henceforward; hereafter, in future. *Magna Charta*, 9 Hen. III. cc. 23, 24, 26, 32, 35, 36. *Quod voluntas donatoris de cetero observetur*; that the will of the donor be henceforward observed. *Stat. De Donis*, 13 Edw. I. c. 1. *De cætero non recedant querentes à curia domini regis, pro eo quod tenementum transfertur de uno in alium*; hereafter plaintiffs shall not go [i. e. as unsuccessful in their actions] from the king's court, because the tenement is transferred from one to another. *Stat. Westm.* 2, c. 24. *Nulla riparia defendatur de cetero*; no river shall hereafter be enclosed. *Magna Charta*, 9 Hen. III. c. 16. See *Id.* c. 28.

DE CALCETO REPARANDO, *Breve*. L. Lat. Writ for repairing a causeway. An old writ by which the sheriff was commanded to distrain the inhabitants of a place to repair and maintain a causeway, &c. *Reg. Orig.* 154.

DE CAPITALIBUS DOMINIS FEODI. L. Lat. Of the chief lords of the fee. A phrase in ancient charters, denoting the tenure by which the estate granted was to

be held. 2 *Bl. Com.* 298, 299. See *Chief Lord*.

DE CAPITE MINUTIS. *Lat.* Of those who have lost their *status*, or civil condition. *Dig.* 4. 5. See *Capitis diminutio*.

DE CARTIS [or CHARTIS] REDDENDIS, *Breve*. Writ for rendering or re-delivering charters, or deeds. A writ of detinue of charters. *Reg. Orig.* 159 b. *F. N. B.* 138. See *De catallis reddendis*.

DE CATALIS REDDENDIS, *Breve*. *L. Lat.* Writ for rendering chattels. A writ to compel the specific delivery of chattels detained from the owner. *Reg. Orig.* 139 b. *O. N. B.* 63. A writ of detinue. *F. N. B.* 138. *Cowell*.

DE CAUTIONE ADMITTENDA, *Breve*. Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstanding he had offered sufficient security (*idoneam cautionem*) to obey the commands of the church; commanding him to take such security and release the prisoner. *Reg. Orig.* 66. *F. N. B.* 63, C.

DE CERTIFICANDO, *Breve*. *L. Lat.* A writ for certifying, or requiring a thing to be certified. A species of *certiorari*. *Reg. Orig.* 151, 152 b.

DE CERTIORANDO, *Breve*. *L. Lat.* A writ for certifying. A writ directed to the sheriff, requiring him to certify to a particular fact. *Reg. Orig.* 24.

DE CETERO. *L. Lat.* Henceforth; hereafter. See *De cætero*.

DE CHAMPERTIA, *Breve*. *L. Lat.* Writ of champerty. A writ directed to the justices of the bench, commanding the enforcement of the statute of *champertors*. *Reg. Orig.* 183. *F. N. B.* 172. See *Champerty*.

DE CHAR ET DE SANK. *L. Fr.* Of flesh and blood. *Affaire rechat de char et de sank*. Words used in claiming a person to be a villein, in the time of Edward II. *Yearb.* P. 1 Edw. II. p. 4.

DE CHIMINO, *Breve*. *L. Lat.* Writ of way. A writ for the enforcement of a right of way, (*chiminum*). A species of *quod permittat*. *Reg. Orig.* 155. See *Quod permittat*.

DE CIBARIIS UTENDIS. *L. Lat.* Of victuals to be used. The title of a sumptuary statute passed 10 Edw. III. st. 3, to restrain the expense of entertainments. *Barringt. Obs. Stat.* 240.

DE CLAMIA ADMITTENDA IN ITINERE PER ATTORNATUM, *Breve*. *L. Lat.* An ancient writ by which the king commanded the justices *in eyre*, to admit a person's claim by attorney, who was employed in the king's service, and could not come in his own person. *Reg. Orig.* 19 b.

DE CLAMIO HABENDO. *L. Lat.* For having a claim. *Fleta*, lib. 5, c. 41, § 3.

DE CLARO DIE. *L. Lat.* By daylight. *Fleta*, lib. 2, c. 76, § 8.

DE CLAUSO FRACTO. *L. Lat.* Of close broken; of breach of close. See *Clausum fregit*.

DE CLERICO ADMITTENDO, *Breve*. *L. Lat.* Writ for admitting a clerk. The writ of execution in a *quare impedit*, directed to the bishop, and commanding him to admit the plaintiff's clerk. Otherwise called a writ *ad admittendum clericum*. 3 *Chitt. Bl. Com.* 413, and note. 3 *Steph. Com.* 665, and note.

DE CLERICO CAPTO PER STATUTUM MERCATORIUM DELIBERANDO, *Breve*. *L. Lat.* Writ for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant. *Reg. Orig.* 147 b. See *Clericus*.

DE CLERICO CONVICTO DELIBERANDO, &c., *Breve*. See *Ad deliberandum clericum*, *Reg. Orig.* 69.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM, *Breve*. *L. Lat.* A writ directed to bailiffs, or others who had thrust a bailiwick or beadleship upon one in holy orders, commanding them to release him, or to desist from their attempts to compel him to discharge the office. *Reg. Orig.* 187 b.

DE CLERO. *L. Lat.* Concerning the clergy. The title of the statute 25 Edw. III. st. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like. 2 *Reeves' Hist. Eng. Law*, 378. *Crabb's Hist.* 270.

DE COMBUSTIONE DOMORUM. *L. Lat.* Of house-burning. One of the kinds of appeal formerly in use in England. *Bract* fol. 146 b. 2 *Reeves' Hist.* 38.

DE COMMUNI CONSILIO REGNI. *L. Lat.* By the common council, (or par-

liament) of the kingdom. A phrase anciently used in reciting the passage of statutes. *Reg. Orig.* 16. See *Commune concilium*.

De communi consilio, *super negotiis quibusdam arduis et urgentibus regem, statum, defensionem regni Angliæ et ecclesiæ Anglicanæ concernentibus*; [to consult together] in parliament, upon certain difficult and urgent matters affecting the king and the state and defence of the realm and church of England. 1 *Bl. Com.* 159.

DE COMMUNI DIVIDUNDO. *Lat.* For dividing a thing held in common. The name of an action given by the civil law. *Inst.* 4. 6. 20. *Id.* 4. 17. 5. *Bract.* fol. 443 b. *Fleta*, lib. 5, c. 9, § 1. See *Communi dividundo*.

DE COMON DROIT. *L. Fr.* Of common right, that is, by the common law. *Co. Litt.* 142 a. See *Common law*.

DE COMPUTO, *Breve.* *L. Lat.* Writ of account. A writ commanding a defendant to render a reasonable account to the plaintiff, or show cause to the contrary. *Reg. Orig.* 135—138. *F. N. B.* 117 E. The foundation of the modern action of account. See *Account*, *Computus*.

DE CONFLICTU LEGUM. *Lat.* Concerning the conflict of laws. The title of several works written on that subject. 2 *Kent's Com.* 455.

DE CONJUNCTIM FEOFFATIS. *L. Lat.* Concerning persons jointly enfeoffed, or seised. The title of the statute 34 Edward I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them. 2 *Reeves' Hist. Eng. Law*, 243.

DE CONSANGUINEO, *Breve.* *L. Lat.* Writ of cosinage. *Reg. Orig.* 226. *F. N. B.* 221 K. See *Consanguineus*, *Cosin*, *Cosinage*.

DE CONSANGUINITATE, *Breve.* *L. Lat.* Writ of cosinage. *Co. Litt.* 160 a. 1 *Reeves' Hist.* 363.

DE CONSILIO. *L. Lat.* In old practice. Of counsel. James Dyer *treit le scire facias, et fuit de consilio petentis in materia*; James Dyer drew the scire facias, and was of counsel for the plaintiff in the matter. *Dyer*, 34 b, (Fr. ed.) See *De counsel*, *A consiliis*.

DE CONSILO. *L. Lat.* In old criminal law. Of counsel; concerning counsel or advice to commit a crime. *Fleta*, lib. 1, c. 31, § 8.

DE CONSILIO CURLÆ. *L. Lat.* By the advice or direction of the court. *Bract.* fol. 345 b.

DE CONSPIRATIONE, *Breve.* *L. Lat.* Writ of conspiracy. A writ which lay where two or more persons maliciously and covinously conspired to indict a person falsely, and afterwards he who was indicted was acquitted. *Reg. Orig.* 134. *F. N. B.* 114 D, 115 G. 2 *Reeves' Hist.* 328. 3 *Bl. Com.* 126. See *Conspiracy*.

DE CONSTITUTA PECUNIA. See *Actio de pecunia constituta*.

DE CONSUETUDINIBUS ET SERVITIIS, *Breve.* *L. Lat.* Writ of customs and services. A writ which lay for a lord against his tenant, who withheld from him, or deforced him of the rents and services due by custom or tenure for his land. *Reg. Orig.* 159. *F. N. B.* 151. *Bract.* fol. 83. 3 *Bl. Com.* 232. *Roscoe's Real Act.* 32. See *Customs*.

DE CONTINUANDO ASSISAM, *Breve.* *L. Lat.* Writ to continue an assise. *Reg. Orig.* 217 b.

DE CONTRIBUTIONE FACIENDA, *Breve.* *L. Lat.* Writ for making contribution. A writ founded on the statute of Marlbridge, (c. 9,) to compel co-parceners, or tenants in common, to aid the eldest in performing the services due by them; or to make contribution, where the services had been already performed. *Reg. Orig.* 176 b. *F. N. B.* 162 B. C. 2 *Reeves' Hist.* 327. 3 *Id.* 55. *Crabb's Hist.* 212.

DE CONTUMACE CAPIENDO, *Breve.* *L. Lat.* Writ for taking a contumacious person. A writ which issues out of the English Court of Chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. *Shelford, Marr. & Div.* 494—496, and notes. It is a commitment for contempt. *Id.* 504, 505. 5 *Ad. & Ell.* N. S. 335.

DE CONVENTIONE, *Breve.* *L. Lat.* Writ of covenant. *Reg. Orig.* 165—167. *F. N. B.* 145. See *Covenant*.

DE COPIA LIBELLI DELIBERANDA, *Breve.* *L. Lat.* Writ for delivering the copy of a libel. An ancient writ directed to the judge of a spiritual court, commanding him to deliver to a defendant a copy of the libel filed against him in such court. *Reg. Orig.* 58. The writ in the Register is directed to the Dean of Arches, and his commissary. *Id.* See *Copia*.

DE CORNES ET DE BOUCHE. *L.*

Fr. With horns and with mouth or voice. Words used in describing the ancient hue and cry. *Britt.* c. 12.

DE CORONATORE ELIGENDO, Breve. L. Lat. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court, (*in pleno comitatu*), the freeholders being the electors. *Reg. Orig.* 177. *Reg. Jud.* Appendix, 19. 1 *Bl. Com.* 347. 3 *Steph. Com.* 31. *Sewell's Law of Sheriff*, 372. A writ of this kind was issued as late as May, 1852. See 35 *Eng. Law & Eq. R.* 136.

DE CORONATORE EXONERANDO, Breve. L. Lat. Writ for discharging or removing a coroner. A writ by which a coroner in England may be removed from office for some cause therein assigned. *F. N. B.* 163, 164. 1 *Bl. Com.* 348. *Sewell's Law of Sheriff*, 373.

DE CORPORE. Lat. Of the body. *Bract.* fol. 37 b. See 7 *Co.* 41 b. 1 *P. Wms.* 73, 79. *De corpore suo*; from or of his own body. *Bract.* fol. 22 b.

DE CORPORE COMITATUS. L. Lat. From the body of the county at large, as distinguished from a particular neighborhood, (*de vicineto*). 3 *Bl. Com.* 360.

DE CORPORE DELICTI. L. Lat. As to the *corpus delicti*, or substantial fact of a crime having been committed. *De corpore delicti constare oportebat*; i. e. *non tam fuisse aliquem in territorio isto mortuum inventum, quam vulneratum et cæsum. Potest enim homo etiam ex alia causa subito mori.* It ought to be clear as to the *corpus delicti*; i. e. not only that one was found dead in that neighborhood, but that he was wounded and slain. For a man may die suddenly from another cause. *Stiernhook de Jur. Gothor.* b. 3, c. 4. 3 *Bl. Com.* 348, note (t).

DE CORRODIO HABENDO, Breve. L. Lat. Writ for having a corody. A writ to exact a corody from a religious house. *Reg. Orig.* 264. *F. N. B.* 230. See *Corody*.

DE COSTE. L. Fr. From, or on the side, (*à latere*); collateral. *Britt.* c. 119.

DE COUNSEL. L. Fr. Of counsel. *De counsel ove le defendant*; of counsel with (for) the defendant. *Dyer*, 38, (Fr. ed.)

DE CURIA CLAUDENDA, Breve. L. Lat. Writ for closing a court. A writ, now disused, to compel a party to close or

enclose his court, (*curia*), or land about his house, where it was left open, to the nuisance of his neighbor's freehold, (*ad nocuummentum liberi tenementi*). *Reg. Orig.* 155. *F. N. B.* 127 G. 1 *Crabb's Real Prop.* 314, § 350. See *Curia*.

DE CURSU. L. Lat. Of course. *Fleta*, lib. 2, c. 13, § 2. *Reg. Orig.* 29 b, regula. Sir Wm. Scott, (*The Fortuna*), 4 *Rob. Adm. R.* 282.

DE CUSTODIA TERRÆ ET HÆREDIS, Breve. L. Lat. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in so-cage, to recover the possession and custody of the infant, or the *wardship of the land and heir*. *Reg. Orig.* 161 b. *F. N. B.* 139 B. 3 *Bl. Com.* 141.

DE CUSTODE ADMITTENDO, Breve. L. Lat. Writ for admitting a guardian. *Reg. Orig.* 93 b, 198.

DE CUSTODE AMOVENDO, Breve. L. Lat. Writ for removing a guardian. *Reg. Orig.* 198.

DE CY EN AVANT. L. Fr. From now henceforth. *Artic. sup. Chart.* c. 1.

DE DEBITO, Breve. L. Lat. Writ of debt. *Reg. Orig.* 139. *F. N. B.* 119, C—121.

DE DEBITORE IN PARTES SECAN-

DO. Lat. Of cutting a debtor in pieces. The title of a law in the Twelve Tables, the meaning of which has been differently interpreted; some writers contending for the literal signification, while others have supposed it to be only a figurative expression, denoting a division of the debtor's estate. The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius and Taylor. *Esprit des Lois*, liv. 29, c. 2. *Bynk. Obs. Jur. Rom.* l. 1, c. 1. *Heinecc. Ant. Rom.* lib. 3, tit. 30, § 4. *Tayl. Comment. in Leg. Decemv.* The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (*semoto omni cruciatu*) in the Roman code itself. *Aul. Gel. Noctes Atticæ*, lib. 20, c. 1. *Code*, 7. 7. 8. This is also the opinion of Gibbon, Gravina, Pothier, Hugo and Niebuhr. *Gibbon's Rom. Emp.* vol. 3, p. 183, (Am. ed.) *Gravina de Jur. Nat. Gent. et XII. Tab. sec.* 72. *Pothier, Introd. Pand. Hugo, Hist. du Droit Rom.* tom. i. p. 233, sec. 149. *Niebuhr, Hist. Rom.* vol. ii. p. 597. 1 *Kent's Com.* 523, note.

DE DECEPTIONE, Breve. L. Lat.

Writ of deceit, or disceit. A writ which properly lay where one did any thing in the name of another, by which the other was damnified and deceived. *Reg. Orig.* 112. *F. N. B.* 95, E. *Reg. Jud.* 9 b, 10.

DE DIE. L. Lat. By day. *Fleta*, lib. 2, c. 76, § 8. *De die claro*; by clear day; by daylight. *Id. ibid.* *Id.* lib. 1, c. 24, § 4.

DE DIE IN DIEM. L. Lat. From day to day. *Bract.* fol. 205 b. *Holt*, C. J. 6 *Mod.* 252.

DE DIVERSIS LIBERTATIBUS CLERO CONCESSIS. L. Lat. Of divers privileges granted to the clergy. The title of a statute passed 9 Edw II. A. D. 1315. Denied by some to have been an act of parliament. Mr. Barrington terms it a "capitulary." *Barr. Obs. Stat.* 195.

DE DIVERSIS REGULIS JURIS ANTIQVI. Lat. Of divers rules of the ancient law. A celebrated title of the Digests, and the last in that collection. It consists of two hundred and eleven rules or maxims. *Dig.* 50. 17.

DE DOLO MALO. Lat. Of, or founded upon fraud. *Dig.* 4. 3. See *Actio de dolo malo*.

DE DOMO REPARANDA, *Breve*. L. Lat. Writ for repairing a house. A writ which anciently lay to compel a man to repair his house, when it threatened to fall (*minatur ruinam*) to the nuisance of another's freehold, &c. *Reg. Orig.* 153 b.

DE DONATIONIBUS. Lat. Of gifts. *Dig.* 39. 5.

DE DONIS CONDITIONALIBUS. L. Lat. Concerning conditional gifts. The title of the first chapter of the statute of Westminster 2, (13 Edw. I.) commonly called the *Statute de Donis*, by which fees simple conditional were converted into fees tail. 2 *Reeves' Hist. Eng. Law*, 164, 165; where its contents are given. 2 *Bl. Com.* 112. 1 *Steph. Com.* 228. 4 *Kent's Com.* 12, 13. *Burton's Real Prop.* 201, ch. ii. *Lewis on Perpetuity*, 27. See *Conditional fee*, *Fee tail*.

DE DOTE ASSIGNANDA, *Breve*. L. Lat. Writ for assigning dower. A writ which lay for the widow of a tenant *in capite*, commanding the king's escheator to cause her dower to be assigned to her. *Reg. Orig.* 297. *F. N. B.* 263, C.

DE DOTE UNDE NIL HABET, *Breve*. L. Lat. Writ of dower, whereof she has nothing. A writ, now much disused, which

lies for a widow entitled to dower of her husband's land, *where no part of it has been assigned her*, commanding the tenant, or person deforcing her, to assign her reasonable dower. *Reg. Orig.* 170. *F. N. B.* 147, E. 148, A. This is a writ of right in its nature. *Roscoe's Real Act.* 39. It must be brought by the widow as demandant, against the tenant of the freehold, that is, the heir or his alienee, and its effect is to enable the former to recover from the latter the seisin of a third part of the tenements in demand, to be set forth to her in severalty by metes and bounds, together with damages and costs. 3 *Steph. Com.* 494.

DE DROIT. L. Fr. [*L. Lat. de jure.*] Of right. *Britt.* c. 107.

DE EJECTIONE CUSTODIÆ, *Breve*. L. Lat. [*L. Fr. ejectment de gard.*] Writ of ejectment of ward. A writ which lay where a guardian had been forcibly ejected from his wardship. *Reg. Orig.* 162.

DE EJECTIONE FIRMAE, *Breve*. L. Lat. Writ of ejectment or ejection of farm. A writ which lay where lands or tenements were let for a term of years, (*firma*, firm or farm,) and afterwards the lessor, reversioner, remainder-man or any stranger ejected or ousted the lessee of his term. It was originally merely a writ of trespass for the recovery of damages for such ejection, but was afterwards used as a remedy for the recovery of the term itself, and became in this way the foundation of the modern action of *ejectment*. *Reg. Orig.* 227 b. *F. N. B.* 220. 3 *Bl. Com.* 199—201. *Bract.* fol. 220. *Crabb's Hist.* 290. *Roscoe's Real Act.* 481. See *Ejectment*, *Firma*.

DE ESCÆTA, *Breve*. L. Lat. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land. *Reg. Orig.* 164 b. *F. N. B.* 143, 144, E.

DE ESCAMBIO MONETÆ, *Breve*. L. Lat. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange (*litteras cambitorias facere*). *Reg. Orig.* 194.

DE ESSE IN PEREGRINATIONE. L. Lat. Of being on a journey. A species of *essoins*. 1 *Reeves' Hist.* 119.

DE ESSENDO QUIETUM DE THEOLONIO, *Breve*. L. Lat. Writ of being quit of toll. A writ which lay for citizens and burgesses of any city or borough [and other persons] who by charter or prescrip-

tion were exempted from toll, [to enforce such exemption]. *Reg. Orig.* 258 b—261. *F. N. B.* 226, l. An action was brought on such a writ as late as 29 George III. London v. Lynn, 1 *H. Bl.* 206.

DE ESSONIO DE MALO LECTI, Breve. L. Lat. Writ of essoin of *malum lecti*. A writ which issued upon an essoin of *malum lecti* being cast, to examine whether the party was in fact sick, or not. *Reg. Orig.* 8 b. See *De malo lecti*.

DE ESTOVERIIS HABENDIS, Breve. L. Lat. Writ for having estovers. A writ which lay for a wife divorced *a mensa et thoro*, to recover her alimony or estovers. 1 *Bl. Com.* 441. 1 *Lev.* 6.

DE ESTREPAMENTO, Breve. L. Lat. Writ of estrepement. A writ to prevent or stop the commission of waste in lands by a tenant, during the pendency of a suit against him for their recovery.* *Reg. Orig.* 76 b. *F. N. B.* 60. 3 *Bl. Com.* 225, 226. Abolished by statute 3 & 4 Will. IV. c. 27. See *Estrepement*.

DE ET SUPER PRÆMISSIS. L. Lat. Of and upon the premises. *Cro. Car.* 216, 217.

DE EU ET TRENE. L. Fr. Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villein, as employed in servile work and subject to corporal punishment. *Co. Litt.* 25 b. But see *De eve et de treve, infra*.

DE EVE ET DE TREVE. L. Fr. From grandfather and great grandfather's great grandfather, (Lat. *de avo et de tritavo*). A phrase used in the Year Books, in cases where a party was claimed by another as his villein, as descriptive of the ancestral rights of lords in such cases. *Nous vous disoins qil est villein R. de eve et de treve, et ses auncestres ael et besayel, &c.* We tell you that he is the villein of R. *de eve et de treve*, and his ancestors, grandfather and great grandfather, &c. *Yearb.* P. 1 Edw. II. 4. It seems also to have been used as descriptive of the ancestral rights of freemen. Kelham gives this sense to *ove et de trove*, another form of the same phrase. It may perhaps be the same with *de eu et trene, (supra)* applied by Lord Coke to the condition of a villein, but with a very different signification.

DE EXCOMMUNICATO CAPIENDO, Breve. L. Lat. Writ for taking an excommunicated person. A writ by which the sheriff was commanded to take an excommunicated person, and imprison him in

the county gaol, until he was reconciled to the church. *Reg. Orig.* 65. 3 *Bl. Com.* 102. Otherwise called, from its initial word, a *significavit*. *Id.* Now superseded by the writ of *contumace capiendo*. *Stat.* 54 Geo. III. c. 127. *Shelford, Marr. & Div.* 494—496, and notes.

DE EXCOMMUNICATO DELIBERANDO, Breve. L. Lat. Writ for delivering an excommunicated person from prison, where he had made satisfaction to the church.* *Reg. Orig.* 65 b. *F. N. B.* 63 a. 3 *Bl. Com.* 102.

DE EXCOMMUNICATO RECAPIENDO, Breve. L. Lat. Writ for retaking an excommunicated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose. *Reg. Orig.* 67.

DE EXCUSATIONIBUS. Lat. Of excuses. The first title of the twenty-seventh book of the Digests is so denominated, as treating of the circumstances which would excuse persons from serving in the offices of *tutor* and *curator*. It is made up, in a great degree, of extracts from the Greek work of Herennius Modestinus on the subject.

DE EXECUTIONE FACIENDA IN WITHERNAM, Breve. L. Lat. Writ for making execution in withernam. *Reg. Orig.* 82 b. A species of *capias in withernam*.

DE EXECUTIONE JUDICII, Breve. L. Lat. Writ of execution of judgment. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. *Reg. Orig.* 18. *F. N. B.* 90. 3 *Reeves' Hist. Eng. Law*, 56.

DE EXEMPLIFICATIONE, Breve. L. Lat. Writ of exemplification. A writ granted for the exemplification of an original. *Reg. Orig.* 290 b.

DE EXONERATIONE SECTÆ, Breve. L. Lat. Writ of exoneration of suit. A writ that lay for the king's ward to be discharged of all suit to the county court, hundred, leet, or court baron, during the time of his wardship. *F. N. B.* 158. *New N. B.* 352.

DE EXPENSIS MILITUM LEVANDIS, Breve. L. Lat. Writ for levying the expenses of knights. A writ directed to the sheriff, for levying the allowance for knights of the shire in parliament. *Reg. Orig.* 191 b, 192.

DE EXPENSIS MILITUM NON LEVANDIS, Breve. L. Lat. Writ to ab-

stain from levying the expenses of knights. A writ prohibiting the sheriff from levying any allowance for knights of the shire upon those that held in ancient demesne, and others. *Reg. Orig.* 261.

DE FACTO. L. Lat. [L. Fr. *de fait, de fet.*] Of fact; from, arising out of, or founded on fact; in fact, in deed; in point of fact; actually, really. An ancient phrase still constantly used in law, in contradistinction to *de jure*, (of, or founded on right; by right); and most commonly applied to persons whose titles or claims rest upon mere fact, without any reference to right, or in actual opposition to right or law. Thus, a king *de facto* is said to be a king in possession, without any respect to his title; an usurper being thus distinguished from a king *de jure*, or rightful heir of the crown, who has never had plenary possession of the throne. 4 *Bl. Com.* 77, 78. See 1 *Id.* 204. Forms of government, established by revolution, are characterized, and often recognized by other nations, as governments *de facto*. See 1 *Kent's Com.* 40, 167. So, any public officer, who acts under color of office, by an election or appointment not strictly legal, or without having duly qualified himself, or by holding over after the expiration of his term, is called an officer *de facto*, as distinguished from the rightful claimant.* 2 *Stra.* 1090, 1091. 2 *Kent's Com.* 295, and note. 5 *Wendell's R.* 231. 1 *Gilman's (Ill.) R.* 529. See 10 *Paige's R.* 223. An officer *de facto* is one who performs the duty of an office with apparent right, and under claim and color of an appointment, but without being actually qualified in law so to act. 37 *Maine (2 Heath.) R.* 423. So, a wife *de facto*, whose marriage is voidable by decree, is distinguished from a wife *de jure*, or lawful wife. 4 *Kent's Com.* 36. This last application is of great antiquity. *Uxor de jure—uxores de facto.* *Bract.* fol. 303. *Femme de droit—femmes de fait et a tort.* *Britt.* c. 107. Bracton applies the term to convictions for felony, and to titles to land; using it in the latter sense as synonymous with *ex facto*, (q. v.) *Bract.* fol. 30 b, 172, 172 b. A blockade is said to be *de facto*, where it is actually maintained by a blockading squadron. See 1 *Kent's Com.* 144, 147.

DE FACTO. L. Lat. Of fact or act; respecting the principal act of a murder, which was technically called *factum*, (q. v.) *Fleta*, lib. 1, c. 27, § 18.

DE FAIT. L. Fr. Of, or in fact; by wrong, as distinguished from *de droit*, of or by right. *Britt.* c. 107. See *De facto*.

DE FALSO JUDICIO. *Breve.* L. Lat. Writ of false judgment. *Reg. Orig.* 15. *F. N. B.* 18. See *False judgment*.

DE FALSO MONETA. L. Lat. Of false money. The title of the statute 27 Edward I. ordaining that persons importing certain coins, called pollards, and crokards, should forfeit their lives and goods, and every thing they could forfeit. 2 *Reeves' Hist.* 228, 229.

DE FEODO. L. Lat. Of fee; in fee. See *In feodo*, *In dominico suo ut de feodo*.

This phrase is applied, in old statutes, to officers. *Forestarius de feodo*; forester of fee. *Cart. de Forest.* c. 14. *Marescallus de feodo*; marshal of fee. *Stat. Westm.* 2, c. 42. *Qui officium habeant de feodo*; who have their offices in fee. Lord Coke observes that these words are not only meant of those who have a fee simple in their offices, but such as have any fixed estate, either in tail or for life.. 2 *Inst.* 462, 463. According to some, it meant such officers as had fees due and belonging to them. *Id. ibid.*

De feodo suo; of his fee; belonging to his fee. *Fleta*, lib. 2, c. 47, § 15.

DE FET. L. Fr. Of fact; in fact; (*de facto*). *Yearb.* P. 2 Edw. II. 36.

De fide et officio judicis non recipitur questio, sed de scientia, sive sit error juris, sive facti. Concerning the fidelity and official conduct of a judge, no question is [will be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. *Bacon's Max.* 68, reg. 17. The *bona fides* and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or fact. *Broom's Max.* [61.] The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their *trust* and *office*, and in wilful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact. *Bacon's Max. ub. sup.* Thus, it cannot be assigned for error that a judge did that which he ought not to do; as that he entered a verdict for the plaintiff, where the jury gave it for the defendant. *F. N. B.* 20, 21. *Bacon's Max. ub. sup. Hardr.* 127, arg. And see 1 *Comstock's R.* 45.

DE FIDEI LÆSIONE. L. Lat. Of breach of faith or fidelity. 4 *Reeves' Hist.* 99. See *Pro læsione fidei*.

DE FINE CAPIENDO PRO TERRIS, *Breve.* L. Lat. A writ which lay for a juror who had been attainted for giving a false verdict, to obtain the release of his person, lands and goods, on payment of a certain fine to the king. *Reg. Orig.* 232. See *Attaint*.

DE FINE FORCE. L. Fr. Of necessity; of pure necessity. *Dyer*, 41, (Fr. ed.) See *Fine force*.

DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO, *Breve.* L. Lat. A writ prohibiting the taking of fines for beau pleader. *Reg. Orig.* 179. See *Beau pleader*.

DE FINE PRO REDISSEISINA CAPIENDO, *Breve.* L. Lat. A writ which lay for the release of one imprisoned for a re-disseisin, on payment of a reasonable fine. *Reg. Orig.* 222 b.

DE FINIBUS LEVATIS. L. Lat. Concerning fines levied. The title of the statute 27 Edward I., requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 *Inst.* 521. *Barringt. Obs. Stat.* 176.

DE FORISFACTURA MARITAGII, *Breve.* L. Lat. Writ of forfeiture of marriage. *Reg. Orig.* 163, 164.

DE FRANGENTIBUS PRISONAM. L. Lat. Concerning those that break prison. The title of the statute 1 Edward II. ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 *Reeves' Hist.* 290. 2 *Inst.* 589.

DE FUGITIVIS. L. Lat. Of fugitives. *Dig.* 11. 4.

DE FURTO. L. Lat. Of theft. One of the kinds of criminal appeal formerly in use in England. 2 *Reeves' Hist.* 40. See *Appeal*.

DE GESTU ET FAMA. L. Lat. Of behaviour and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached. *Lamb. Eiren.* lib. 4, c. 14.

DE GRATIA. L. Lat. Of grace or favor; by favor. *Fleta*, lib. 2, c. 57, § 11. *De speciali gratia*; of special grace or favor. *Id. ibid.*

DE GRATIA SPECIALI, EX CERTA

SCIENTIA, ET MERO MOTU. L. Lat. Of special grace, certain knowledge and mere motion. Formal words used in royal grants and patents; *de gratia speciali*, showing the favor and bounty of the sovereign to the patentee; *ex certa scientia*, implying a full knowledge and understanding of the matter; and *ex mero motu*, testifying that there was not any suit nor suggestion of the patentee, but that the first motion, and all that followed from it to the perfection of the patent, proceeded from the sovereign himself. *Plowd.* 330. 1 *Co.* 51 b. 2 *Bl. Com.* 347.

DE HÆREDE DELIBERANDO ILI QUI HABET CUSTODIAM TERRÆ, *Breve.* L. Lat. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another, to deliver him to the person whose ward he was by reason of his land. *Reg. Orig.* 161.

DE HÆREDE RAPTO ET ABDUCTO, *Breve.* L. Lat. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who having by right the wardship of his tenant under age, could not obtain his body, the same being carried away by another person. *Reg. Orig.* 163. *O. N. B.* 93.

DE HÆRETICO COMBURENDO, *Breve.* L. Lat. Writ for burning a heretic. A writ which lay against a heretic who having been convicted of heresy by the bishop, and abjured it, afterwards fell into the same again, or some other, and was thereupon delivered over to the secular power. *F. N. B.* 269, B. This writ has been said to be as ancient as the common law itself. 1 *Hale's P. C.* 392. 4 *Bl. Com.* 46. See an instance of its use in 1 *How. St. Trials*, 173, 174. It was abolished by statute 29 *Car. II.* c. 9. *Id.* 49. 3 *Steph. Com.* 99, 101.

DE HAUT ET DE BAS. L. Fr. Of high and low. A term used to express the unlimited power of taxation which a lord had over his villein. 3 *How. St. Trials*, 871. *Affaire rechat de char et de sank, et de euz tailler haut et bas*; to make ransom of flesh and of blood, and to tax them high and low. *Yearb.* P. 1 *Edw. II.* 4.

DE HECHO. Span. By deed. *White's New Recop.* b. 2, tit. 19, c. 3, § 2.

DE HOMAGIO RESPECTUANDO, *Breve.* L. Lat. Writ for respitting or postponing homage. *F. N. B.* 269, A.

DE HOMINE CAPTO [CAPIENDO] IN WITHERNAM. *Breve*. L. Lat. Writ for taking a man in withernam. A writ that anciently lay to take in withernam him that had taken any bondman or woman, and led him or her out of the county, so that he or she could not be replevied according to law. *Reg. Orig.* 79, 80. A species of *capias in withernam*. 3 *Bl. Com.* 129. See *Withernam*.

DE HOMINE REPLEGIANDO, *Breve*. L. Lat. Writ for replevying a man. A writ to replevy a man out of prison, or out of the custody of any private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. *Reg. Orig.* 77 b, 78. *F. N. B.* 66, E. 3 *Bl. Com.* 129. 2 *Reeves' Hist.* 83. This writ, though obsolete in England, is still in use in some of the United States. In New-York, it is allowed to one who is claimed by another as a fugitive from another state, and bound to serve him, notwithstanding a *habeas corpus* may have been previously issued or served. 2 *Rev. St.* [561,] 464, § 15. See 3 *Rev. St.* (5th ed.) 878. 2 *Paine's R.* 348. 1 *Kent's Com.* 404, note.

DE IDEMPTITATE (or IDENTITATE) NOMINIS, *Breve*. L. Lat. A writ respecting identity of name. A writ which anciently lay for one who was taken and arrested in any personal action, and committed to prison for another of the same name. *Reg. Orig.* 194—196. *Reg. Jud.* 17. *F. N. B.* 267, E. 268.

DE IDIOTA INQUIRENDO, *Breve*. L. Lat. A writ to inquire whether a man be an idiot or not. *Reg. Orig.* 266. *F. N. B.* 232, A. 1 *Bl. Com.* 303.

DE IIS QUI PONENDISUNT IN ASSISIS. L. Lat. Of those who are to be put on assises. The title of a statute passed 21 Edward I. defining the qualifications of jurors. *Crabb's Hist. Eng. Law*, 167, 189. 2 *Reeves' Hist.* 184.

DE IN REM VERSO. See *Actio de in rem verso*.

DE INCREMENTO. L. Lat. Of increase; in addition; additional. Costs *de incremento*, or costs of increase, are the costs adjudged by the court in civil actions, in addition to the damages and nominal costs found by the jury. *Gilb. C. Pleas*, 260. See 13 *Howard's R.* 372, *Grier, J.*

Wages de incremento. Lord Ellenborough, C. J. 4 *M. & S.* 316.

DE INFIRMITATE. Lat. Of infirmity. The principal essoin in the time of Glanville; afterwards called *de malo*. 1 *Reeves' Hist.* 115. See *De malo, Essoin*.

DE INGRESSU, *Breve*. L. Lat. Writ of entry. *Bract.* fol. 318, 319. *Reg. Orig.* 227 b.—231, 235—237. *Cowell, voc. Ingressu*. See *Entry*.

DE INJURIA. See *infra*.

DE INJURIA SUA PROPRIA, ABSQUE TALI CAUSA. L. Lat. [L. Fr. *de son tort demesne sans tiel cause*.] Of his own wrong, without such cause. Formal words of traverse, used in replications in actions of trespass, and more compendiously called the traverse *de injuria*. Where the defendant, in an action of trespass for assault and battery, pleads *son assault demesne* (that the plaintiff first made an assault upon him, and that he acted in self-defence,) the plaintiff may reply that he committed the trespass *of his own wrong*, and *without such cause* or excuse as he alleges. This kind of traverse always tenders issue, but differs from the common form of a traverse by denying in general and summary terms, and not in the words of the allegation traversed. *Steph. Pl.* 163. *Crogate's case*, 8 *Co.* 66. 1 *Smith's Lead. Cas.* 53, 55. 1 *Chitt. Pl.* 605—611. It is in general proper where the plea consists of matter of excuse only, and its effect is to put the whole plea in issue, and compel the defendant to prove it. 1 *Archb. N. Prius*, 148, 387.

Where a part of the plea is admitted, the foregoing replication is termed *de injuria absque residuo causæ*. 1 *Chitt. Pl.* 606.

DE INOFFICIOSO TESTAMENTO. Lat. Concerning an inofficious, or undutiful will. A title of the civil law. *Dig.* 5. 2. *Inst.* 2. 18. See *Inofficiosum*.

DE INTEGRO. Lat. Anew; a second time. 1 *Vern.* 223, 232.

As it was before. Lord Ellenborough, 5 *M. & S.* 222.

DE INTRUSIONE, *Breve*. L. Lat. Writ of intrusion. A writ which lay for a reversioner, where tenant for life, or in dower, or by the curtesy, died seised of such estate for life, and after their death a stranger intruded upon the land. *Reg. Orig.* 233 b. *F. N. B.* 203, E.

DE ITINERE. Lat. Of way; of the right of way or path. *Dig.* 43. 19. See *Iter*.

DE JACTIS IN MARE LEVANDÆ NAVIS CAUSA. Lat. Concerning things

thrown into the sea, for the purpose of lightening a ship. A title of the civil law. *Inst.* 2. 1. 47.

DE JACTURA EVITANDA. L. Lat. For avoiding a loss. A phrase applied to a defendant, as *de lucro captando* is to a plaintiff. 1 *Littell's R.* 51.

DE JUDAISMO. Lat. Concerning Judaism. The title of a statute passed 18 (or according to Prynne, 4) Edw. I. prohibiting usury. *Crabb's Hist. Eng. Law*, 167. See *Judaismus*. Mr. Barrington calls it *incerti temporis*. *Obs. Stat.* 222.

DE JUDICIO SISTI. L. Lat. For appearing in court. A term applied in Scotch and admiralty law, to bail for a defendant's appearance. *Clerke's Prax. Cur. Adm.* tit. 11.

DE JUDICATO SOLVENDO. L. Lat. For payment of the amount adjudged. A term applied in Scotch and admiralty law, to bail to the action, or special bail. *Clerke's Prax.* tit. 11. See *Special bail*, *Judicatum solvere*.

DE JUDICIIS. Lat. Of judicial proceedings. The title of the second part of the Digests or Pandects, including the fifth, sixth, seventh, eighth, ninth, tenth and eleventh books. See *Dig. proem.* § 3.

DE JURE. Lat. Of right; by right or law; growing out of right; rightfully; rightful; lawful. 4 *Bl. Com.* 77. *Magna Charta*, c. 15. *Bract.* fol. 45. A king *de jure*. A wife *de jure*. The opposite of *de facto*, (q. v.)

Of right; as distinguished from *de gratia*, (q. v.) of grace.

By or at law, according to law; as distinguished from *de æquitate*, (q. v.)

Founded upon law. *Hale's Hist. Com. Law*, 49.

Of or concerning law, or the law. *Inst.* 1. 1, 2. *Dig.* 1. 1. A component part of numerous titles in the Digests.

DE LA PLUIS BEALE (or BELLE.) L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements. *Litt. sect.* 48. This was abolished with the military tenures. 2 *Bl. Com.* 132. 1 *Steph. Com.* 252.

DE LATERE. Lat. From the side; on the side, collaterally; of collaterals. *Cod.* 5. 5. 6.

DE LEGATIS ET FIDEI COMMISSIS. Lat. Of legacies and trusts. *Dig.* 30.

DE LEGE RHODIA DE JACTU. Lat.

Of the Rhodian law of jettison. A title of the Pandects, in which the Rhodian law of jettison is adopted. *Dig.* 14. 2. 1. 3 *Kent's Com.* 233.

DE LEPROSO AMOVENDO. Breve. L. Lat. Writ for removing a leper. A writ to remove a leper who thrust himself into the company of his neighbors in any parish, in public or private places, to their annoyance. *Reg. Orig.* 267. *F. N. B.* 234, E. *New N. B.* 521.

DE LIBERA FALDA. Breve. L. Lat. Writ of free fold. A species of *quod permittat*. *Reg. Orig.* 155.

DE LIBERA PISCARIA. Breve. L. Lat. Writ of free fishery. A species of *quod permittat*. *Reg. Orig.* 155.

DE LIBERO PASSAGIO. Breve. L. Lat. Writ of free passage. A species of *quod permittat*. *Reg. Orig.* 155.

DE LIBERATE ALLOCANDA. Breve. See *Liberate*.

DE LIBERTATE PROBANDA. Breve. L. Lat. Writ for proving property. A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free. *Reg. Orig.* 87 b. *F. N. B.* 77, F.

DE LIBERTATIBUS ALLOCANDIS. Breve. L. Lat. Writ for allowing liberties. A writ which lay for a citizen or burgess entitled to certain liberties, to have them allowed him. *Reg. Orig.* 262. There were various writs of this kind. *Id.* 263 b. *F. N. B.* 229.

DE LIBERTATIBUS PERQUIRENDIS. *Ordinatio.* L. Lat. The title of a statute passed 27 Edw. I. st. 2. *Crabb's Hist. Eng. Law*, 167.

DE LICENTIA TRANSFRETANDI. Breve. L. Lat. Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. *Reg. Orig.* 193 b.

DE LUNATICO INQUIRENDO. L. Lat. For inquiring about a lunatic or lunacy. The name of a commission, in the nature of a writ, issued in cases of alleged lunacy, to inquire whether the party be a lunatic or not; otherwise called a commission of lunacy. *Stock on Non Compos Mentis*, 86—92. *Reg. Jud. Appendix*, 19. 2 *Steph. Com.* 531. See *Commission of Lunacy*.

DE MAGNA ASSISA ELIGENDA. Breve. L. Lat. Writ of, or for choosing

the grand assise. A writ directed to the sheriff to summon four lawful knights, before the justices of assise, there, upon their oaths, to choose twelve knights of the vicinage to be joined with them; which sixteen knights constituted the grand assise, or great jury, which was to try the matter of right in a writ of right. *Reg. Orig.* 8. *F. N. B.* 4, *F.* 3 *Bl. Com.* 351. Abolished by statute 3 & 4 Will. IV. c. 27. See *Grand assise*.

DE MALE FAME. L. Fr. Of bad reputation. *Stat. Westm.* 1, c. 12.

DE MALO. L. Lat. Of illness. See *infra*.

DE MALO LECTI. L. Lat. [L. Fr. *de mal de lyt.*] Of infirmity or illness of [in] bed. Closely rendered, in old Scotch law, *bed-evil*, (*bedde-evil*). A species of essoin or excuse for non-appearance in court, formerly allowed a defendant in England, and more anciently called *de infirmitate de reseantisa*; the excuse being that the defendant was confined to his house in bed, (*lectus*.) by infirmity or indisposition, (*malum*). *Glanv.* lib. 1, c. 18, 19. *Bract.* fol. 337, 344 b. *Britt.* c. 122, 123. *Fleta*, lib. 6, c. 10. 1 *Reeves' Hist. Eng. Law*, 115, 412. *Skene de Verb. Sign. voc. Reseantisa*. See *Malum lecti*. This essoin commonly followed immediately upon that *de malo veniendi*, (*infra*); for where a person, having been detained on the road by sickness, and having cast the essoin *de malo veniendi*, had found himself obliged to return home, the order of essoins, conformably with what was likely to be the real fact, led to the essoin *de malo lecti*. 1 *Reeves' Hist.* 412. *Bract.* fol. 344 b.

DE MALO VENIENDI. L. Lat. [L. Fr. *de mal de venue*.] Of infirmity or misfortune in coming. A species of essoin or excuse for non-appearance in court, formerly allowed a defendant in England, and more anciently called the essoin *de infirmitate veniendi*; the excuse being that while on the way (*in veniendo*, or *in itinere*.) from his house to the court, such an infirmity befel him, (*talis infirmitas ei devenit*, or *ita infirmatus fuerit*.) that he could not attend. *Bract.* fol. 337, 338. *Britt.* c. 122, 123, 125. *Fleta*, lib. 6, c. 9. 1 *Reeves' Hist.* 115, 406. According to Spelman, (who gives it also the name of *malum via*.) it lay where the party either could not attend on account of actual impossibility, or dared not, on account of apprehended danger, or could not reach court

in season on account of the length of the journey. *Spelman*, voc. *Essoniare*. It was called the common essoin. *Id. Bract.* fol. 337, 337 b. See *Malum via*.

DE MALO VILLÆ. L. Lat. Of illness in a town. A species of essoin, where a party had appeared in court, but was afterwards, before any answer to the suit, taken ill in the town where the court sat, and was unable to attend. *Bract.* fol. 363 b. 1 *Reeves' Hist.* 417. This is not mentioned by Spelman, and Bracton calls it anomalous. *Bract. ub. sup.* See *Fleta*, lib. 6, c. 13.

DE MANUCAPTIONE, *Breve*. L. Lat. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainpnors or bail. *Reg. Orig.* 268 b. *F. N. B.* 249, G.

DE MANUTENENDO, *Breve*. L. Lat. Writ of maintenance. A writ which lay against a person for the offence of maintenance. *Reg. Orig.* 189, 182 b.

DE MEDIETATE LINGUÆ. L. Lat. Of half-tongue; i. e. half of one tongue or language, and half of another. A term applied to that particular description of jury in England, where one-half consisted of denizens or natives, and the other half of aliens, and which was allowed both in civil and criminal actions where one of the parties was an alien. *Staundf. Pl. Cor.* lib. 3, c. 7. 3 *Bl. Com.* 360. 4 *Id.* 352. See *Bilinguis*, *Half-tongue*, *Medietas linguæ*. It was first introduced in favor of foreign merchants, by the statute of the staple, 27 Edw. III. st. 2, c. 8, and was extended to criminal cases by stat. 28 Edw. III. c. 13. 2 *Reeves' Hist.* 395, 461. It is still allowed in trials for felony or misdemeanour, but no longer in a civil action. *Stat. 6 Geo. IV.* c. 50, ss. 3, 47. 3 *Steph. Com.* 596, note. 4 *Id.* 422. It was formerly in use in the state of New-York, but is now abolished, as it generally is throughout the United States. 2 *Johns. R.* 381. 1 *N. Y. R. L.* (1813), 334, § 24. 2 *N. Y. Rev. St.* [419], 339, § 53. *Id.* [734], 614, § 7. 6 *Dane's Abr.* c. 182.

DE MEDIO, *Breve*. L. Lat. Writ of mesne. A writ in the nature of a writ of right, which lay for an under-tenant against the mesne or middle lord, where, upon a subinfeudation, the *mesne*, or middle lord, suffered his under-tenant, or tenant para-

vail, to be distrained upon by the lord paramount for the rent due to him from the mesne lord. 3 *Bl. Com.* 234. *Co. Litt.* 100 a. *Reg. Orig.* 160. *F. N. B.* 135, *M. N. Bract.* fol. 21 b. *Roscoe's Real Act.* 38. See *Mesne, Paramount, Paravail.*

DE MELIORIBUS DAMNIS. L. Lat. Of, or for the better damages. A term used in practice, to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately,) he will take judgment. 1 *Arch. Pr.* 219. 8 *Cowen's R.* 111.

DE MERCATORIBUS. Lat. Of merchants. There were two English statutes passed under this title; the first, in the eleventh year of Edward I. otherwise called the statute of *Acton Burnel*, (q. v.); the second in the thirteenth year of the same reign. By this statute, all the lands of a debtor, where the debt was contracted in trade, might be delivered to the creditor to hold in pledge until the debt was levied, when the land was to be restored. *Stat. de Merc.* 13 *Edw. I.* st. 3. 2 *Bl. Com.* 161. The recognizance introduced by this statute was called a statute-merchant. *Id.* 160. 2 *Reeves' Hist.* 160—162. See *Barringt. Obs. Stat.* 116—119.

DE MILITIBUS. Lat. Of, or concerning knights. The title of a statute passed in the 1st year of Edw. II. the object of which was to abate that part of the feudal system, which required every one possessed of a knight's fee (*feudum militare*), to take upon him the order of knighthood, (*suscipere arma militaria*). *Crabb's Hist.* 201, 2. 2 *Reeves' Hist.* 288. 2 *Inst.* 593. This is said to have been not properly a legislative act, but a writ granted by the king in time of parliament, and entered by his direction on the record. *Id. ibid.* See *Barringt. Obs. Stat.* 192.

De minimis non curat lex. The law does not care for, or take notice of very small or trifling matters. The law does not concern itself about trifles. *Broom's Max.* [105]. Thus, error in calculation of a fractional part of a penny will not be regarded. *Hob.* 88. *Cro. Eliz.* 353. So, the law will not, in general, notice the fraction of a day. *Broom's Max.* 333. See *Id.* 156, [266.] Nor the imperceptible gain of land from the sea by alluvion. 2 *Bl. Com.* 262. This maxim is sometimes applied to matters of conduct. See 2 *Littell's R.* 218. But it is never applied to cases of positive and wrongful invasion of

right, however trifling may be the injury actually sustained. See 5 *Hill's* (N. Y.) *R.* 170.

DE MINIS, Breve. Lat. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace. *Reg. Orig.* 88 b, 89. *F. N. B.* 79, G. 80.

DE MITTENDO TENOREM RECORDI, &c. Breve. L. Lat. Writ to send the tenor of a record, or to exemplify it under the great seal. *Reg. Orig.* 220 b.

DE MODERATA MISERICORDIA CAPIENDA, Breve. Writ for taking a moderate amercement. A writ, founded on *Magna Charta*, (c. 14,) which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him to take a moderate amercement of the party. *Reg. Orig.* 80 b. *F. N. B.* 75, 76.

DE MODO DECIMANDI. L. Lat. Of a modus of tithing. A term applied, in English ecclesiastical law, to a prescription to have a special manner of tithing. 2 *Bl. Com.* 29. 3 *Steph. Com.* 130.

DE MONETA. L. Lat. Concerning money. The title of three statutes passed in the 20th year of Edward I., viz: the statute *De moneta*, 20 *Edw. I.* st. 4; the statute *De moneta, parvum*, 20 *Edw. I.* st. 5, and the *Articuli de moneta*, 20 *Edw. I.* st. 6. These were particularly directed against the importation of clipped and counterfeit money. 2 *Reeves' Hist.* 228.

De morte hominis nulla est cunctatio longa. Where the death of a human being is concerned, [in a matter of life and death,] no delay is [considered] long. *Co. Litt.* 134. *Rokeby, J. Com.* 17. This is a slight alteration of a line of Juvenal:

Nulla unquam de morte hominis cunctatio longa est.

Sat. vi. 231.

DE MOTEN MOT. L. Fr. From word to word; word for word. *Britt.* c. 22.

DE NATIVO HABENDO, Breve. L. Lat. [L. Fr. *briefe de naiffie*.] Writ for having one's villein. A writ which lay for a lord whose villein had fled from him, (*fugitivo*), directed to the sheriff, commanding him to apprehend the villein, and restore him, with all his chattels, to the lord. *Reg. Orig.* 87. *F. N. B.* 77. *Roscoe's Real Act.* 34.

DE NAUTICO FENORE. Lat. Of maritime interest. A title of the civil law.

Dig. 22. 2. *Cod.* 4. 33. 3 *Kent's Com.* 354, note.

De non apparentibus et non existentibus eadem est ratio. Things which do not appear are treated in law the same as if they did not exist. See *Apparens, Apparere*.

DE NON DECIMANDO. L. Lat. Of not paying tithes. A term applied, in English ecclesiastical law, to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 *Bl. Com.* 31.

DE NON PROCEDENDO AD ASSISAM, Breve. Writ for not proceeding to take an assise. A writ, directed to the justices assigned to hold assises, commanding them not to proceed to take an assise in a particular case. *Reg. Orig.* 221.

DE NON SANE MEMORIE. L. Fr. Of unsound memory or mind; a phrase synonymous with *non compos mentis*. *Litt. sect.* 405. *Plowd.* 368. *Stock on Non Compos Mentis*, 1. See *Memory, Non Compos Mentis*.

DE NOVEL. L. Fr. Anew; newly. *Ad de novel graunt*; hath granted anew. *Artic. sup. Chart.*

DE NOVI OPERIS NUNCIATIONE. Lat. Concerning the prohibition of a new work. A title of the civil law. *Dig.* 30. 1. See *Nuntiatio*.

DE NOVO. Lat. [L. Fr. *de novel*.] Anew; (of new,) a second time. In Scotch law, literally rendered "of new." 2 *How. St. Trials*, 721.

DE ODIIO ET ATIA, Breve. L. Lat. Writ of hatred and malice. A writ which anciently lay for a person committed to prison on a charge of homicide, and who otherwise could not be bailed. It was directed to the sheriff, commanding him to make inquisition by the oaths of lawful men, whether the party in prison was charged through malice, (*utrum retatus de odio et atia*), or upon just cause of suspicion. If it was found that he was accused *odio et atia*, and that he was not guilty; or if he committed the deed *se defendendo*, or *per infortunium*, then a writ of *tradas in ballium* might issue, commanding the sheriff, if the prisoner could find twelve good and lawful men of the county, who would be mainperners for him, then he should deliver him to them *in bail*. *Reg. Orig.* 133 b. *Bract.* fol. 123. 3 *Bl. Com.* 128. 1 *Reeves' Hist. Eng. Law*, 252. 2 *Id.* 14. *Crabb's Hist.* 148. *Mag. Chart.* c. 26. *Stat. Westm.* 2, c. 29. This writ was one of the great se-

curities of personal liberty in England, resembling in its objects the writ of *habeas corpus*, by which it is now superseded. 1 *Reeves' Hist.* 252. It is first mentioned by name in *Magna Charta*, (as *breve inquisitionis*), which ordained that it should issue in future gratis, and should never be denied; but Mr. Crabb supposes it was not introduced by statute, but existed at common law. *Crabb's Hist.* 148. It was abolished by statute 28 *Edw. III.* c. 9. But Lord Coke considered it to have been revived by the stat. 42 *Edw. III.* c. 1. 3 *Bl. Com.* 129. See *Atia*.

DE OFFICE. L. Fr. Of office; in virtue of office; officially; in the discharge of ordinary duty. *Le court d'office est tenu*; the court is bound, in virtue of its office. *Yearb. H.* 4 *Hen. VI.* 16.

This phrase corresponds with the Lat. *ex officio*, or, more nearly with *virtute officii*.

DE OFFICIO CORONATORIS. L. Lat. Concerning the office of coroner. The title of the statute 4 *Edward I.*, enumerating the duties of the office of coroner. 2 *Reeves' Hist.* 140.

DE ONERANDO PRO RATA PORTIONE, Breve. L. Lat. Writ for charging according to a rateable proportion. A writ which lay for a joint tenant, or tenant in common, who was distrained for more rent than his proportion of the land came to. *Reg. Orig.* 182. *F. N. B.* 234, H. This writ is called by Fitzherbert, *De deonerando pro rata portione*, and in the Register, *De onerando secundum ratum portionis*.

DE PACE ET LEGALITATE TUENDA. L. Lat. For keeping the peace, and for good behaviour. *Tradat fidejussores de pace et legalitate tuenda*; he shall deliver or find sureties for keeping the peace and good behaviour. *LL. Edw. Conf.* c. 18. 4 *Bl. Com.* 252, 254. *Spelman*, voc. *Legalitas*. See *Legalitas*.

DE PACE ET PLAGIS. L. Lat. Of peace [breach of peace] and wounds. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of assault, wounding and breach of the peace. *Bract.* fol. 144. 2 *Reeves' Hist.* 33. See *Appeal*.

DE PACE ET ROBERIA. L. Lat. Of peace [breach of peace] and robbery. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of robbery and breach of the peace. *Bract.* fol. 146. 2 *Reeves' Hist.* 37. See *Appeal*.

DE PACE ET IMPRISONAMENTO.

L. Lat. Of [breach of] peace and imprisonment. The title of an appeal formerly in use in England, in cases of imprisonment and breach of the peace. *Bract. fol. 145 b.* 2 *Reeves' Hist.* 35. See *Appeal*.

DE PACE INFRACTO. **L. Lat.** Of peace broken; of breach of the peace.

DE PALABRA. **Span.** By word; by parol. *White's New Recop.* b. 2, tit. 19, c. 3, § 2.

DE PARCO FRACTO, Breve. **L. Lat.** Writ of pound breach. A writ which lay against him who violently broke a pound, and took out beasts from thence, which were lawfully impounded. *Reg. Orig.* 116, b. *F. N. B.* 100, *E. F. Co. Litt.* 47 b. 3 *Bl. Com.* 146.

DE PARENDO JURL. **L. Lat.** Of, or for obeying the law; to obey the law; or the mandate of a writ. *Fleta*, lib. 2, c. 62, § 4.

DE PARTITIONE FACIENDA, Breve. **L. Lat.** Writ for making partition. A writ which lay to make partition of lands or tenements held by several *pro indiviso* as coparceners, &c. *Reg. Orig.* 76. *F. N. B.* 61, R. *O. N. B.* 142. 2 *Bl. Com.* 189. 3 *Reeves' Hist.* 55.

DE PECULIO ACTIO. See *Actio de peculio*.

DE PASSAGIO. **L. Lat.** Of passage. *De passagio simplici*; of simple passage. *Fleta*, lib. 2, c. 8, § 1. One of the essoins of *ultra mare*. See *De ultra mare*.

DE PERAMBULATIONE FACIENDA, Breve. **L. Lat.** Writ for making perambulation. A writ which lay to ascertain the boundaries of lands, where parties were in doubt of the bounds of their lordships or of their towns; and which was done by *walking about, through* or between them. It was directed to the sheriff, commanding him to go with twelve knights of his county to the land in question, and by their oath to cause a *perambulation* to be made between them, according to their respective metes and bounds, (*per terras, metas et divisas*.) *Reg. Orig.* 157 b. *F. N. B.* 133, D. See *Perambulation*.

DE PEREGRINATIONE. **L. Lat.** Of pilgrimage. *De peregrinatione et passagio generali*; of pilgrimage and general passage. *Fleta*, lib. 6, c. 8, § 1. One of the essoins of *ultra mare*.

DE PIGNORE SURREPTO FURTI, ACTIO. **Lat.** In the civil law. An action to recover a pledge stolen. *Inst.* 4. 1. 14.

DE PIPA VINI CARIANDA, Breve. **L. Lat.** A writ of trespass for carrying a pipe of wine so carelessly that it was stove, and the contents lost. *Reg. Orig.* 110. Alluded to by Sir William Jones, in his remarks on the case of *Coggs v. Barnard Jones on Bailm.* 59.

DE PLACITO. **L. Lat.** Of a plea; of, or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought. *De placito debiti*; of a plea of debt. *De placito conventionis fractæ*; of a plea of breach of covenant. *De placito transgressionis*; of a plea of trespass. *De placito transgressionis super casum*; of a plea of trespass on the case. *Towns. Pl.* 162—165. See the older forms in *Fleta*, lib. 2, c. 65, § 12. See *Placitum*.

DE PLAGIS ET MAHEMIO. **L. Lat.** Of wounds and maihem. The name of a criminal appeal formerly in use in England, in cases of wounding and maiming. *Bract. fol. 144 b.* 2 *Reeves' Hist.* 34. See *Appeal*.

DE PLAIN. **L. Fr.** In a summary way. *Kelham.* See *De plano*.

DE PLANO. **Lat. and L. Lat.** In the civil law. Without form; in a summary manner. The prætor was said to administer justice in this way, (*de plano cognoscere*,) when he did so standing on the ground, or on the same level with the suitors, instead of occupying a tribunal, (*pro tribunali*,) elevated seat, or bench, as it was termed in the English law. See *Bench*. The *Fr. de plain* (q. v.) is derived from this.

In the common law. Clearly; manifestly. The phrase is used in this classical sense in the statute *De Bigamis*, 4 *Edw. I.*

By covin, or collusion. *Stat. Westm.* 2, c. 4. This did not mean by default. *Id. ibid.* 2 *Inst.* 349. See 2 *Reeves' Hist.* 191. 4 *Id.* 23, 34, 36.

In Scotch practice. Forthwith. 2 *Alison's Crim. Pr.* 650.

DE PLEGIIS ACQUIETANDIS, Breve. **L. Lat.** Writ for acquitting or releasing pledges. A writ that lay for a surety, against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it. *Reg. Orig.* 158. *F. N. B.* 137, C. 3 *Reeves' Hist.* 65.

DE PLEINE AGE. **L. Fr.** Of full age. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510.

DE PONE, *Breve*. L. Lat. Writ of pone. *Fleta*, lib. 2, c. 44, § 3. See *Pone*.

DE PONENDO SIGILLUM AD EXCEPTIONEM, *Breve*. L. Lat. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit. *Reg. Orig.* 182.

DE POST DISSEISINA, *Breve*. L. Lat. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by *præcipe quod reddat*, on default or reddition, was again disseised by the former disseisor. *Reg. Orig.* 208. *F. N. B.* 190.

DE PRÆROGATIVA REGIS. L. Lat. Of the king's prerogative. The title of the statute 17 Edward II. st. 1, defining the prerogatives of the crown on certain subjects, partly of a feudal and partly of a political or general nature. *Crabb's Hist. Eng. Law*, 204, et seq. *Barringt. Obs. Stat.* 202. *Hale's Hist. Com. Law*, ch. 8.

DE PRÆSENTI. L. Lat. Of the present; in the present tense. See *Per verba de præsentia*.

DE PROCEDENDO IN ASSISA, *Breve*. L. Lat. Writ for proceeding in an assise. A writ by which the justices of assise were commanded to proceed in an assise, where the proceedings had been stayed. *Reg. Orig.* 220.

DE PROSEQUENDO. L. Lat. Of, or for prosecuting; to prosecute. *Fleta*, lib. 2, c. 60, § 33. *Id.* lib. 4, c. 5, § 2.

DE PROPRIETATE PROBANDA, *Breve*. L. Lat. Writ for proving property. A writ directed to the sheriff, to inquire of the property of goods distrained, where the defendant in an action of replevin claims the property. 3 *Bl. Com.* 148. *Reg. Orig.* 85 b.

DE PROTECTIONIBUS. Lat. Of or concerning protections. The title of a statute passed in the 33d year of Edward I. to prevent some of the evil consequences attending the privileges given by writs of protection. 2 *Reeves' Hist.* 242.

DE PROTECTIONE, *Breve*. Lat. Writ of protection. *Reg. Orig.* 25, 26. See *Protection*.

DE QES EN CA, *De kes en sea*. L. Fr. From which time until now. *Kelham*.

DE QUO, & DE QUIBUS. Lat. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the quo," or "in the quibus." 3 *Reeves' Hist.* 33. *Præcipe A. quod—red-*

dat B. tantum terræ—de quo idem A. disseisivit prædictum B., &c.; command A. that—he render to B. so much land—of which the said A. disseised the aforesaid B., &c. *Reg. Orig.* 229.

DE RAPTU VIRGINUM. Lat. Of the ravishment of maids. The name of an appeal formerly in use in England, in cases of rape. *Bract.* fol. 147. 2 *Reeves' Hist.* 38. See *Appeal*.

DE RATIONABILIBUS DIVISIS, *Breve*. L. Lat. Writ for fixing reasonable boundaries. A writ which lay to settle the boundaries between the lands of persons in different towns, where one complained of encroachment. *Reg. Orig.* 157 b. *F. N. B.* 128, M. *Roscoe's Real Act.* 31. 3 *Reeves' Hist.* 48.

DE RATIONABILI PARTE BONORUM, *Breve*. L. Lat. A writ which lay for the wife and children of a deceased person against his executors, to recover their reasonable part or share of his goods. 2 *Bl. Com.* 492. *F. N. B.* 122, L. See *Reasonable part*.

DE REBUS. Lat. Of things. The title of the third part of the Digests or Pandects, comprising the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth books.

DE REBUS DUBIIS. Lat. Of doubtful things or matters. *Dig.* 34. 5.

DE RECEPTAMENTO. L. Lat. Of receipt; of harbouring. *Bract.* fol. 152 b. A term of old criminal law. See *Receptamentum*.

DE RECORDO ET PROCESSU MITTENDIS, *Breve*. L. Lat. Writ to send the record and process of a cause to a superior court; a species of writ of error. *Reg. Orig.* 209.

DE RECTO, *Breve*. L. Lat. Writ of right. *Reg. Orig.* 1, 2. *Bract.* fol. 327 b. See *Writ of Right*.

DE RECTO DEFICERE. L. Lat. To fail of right; to fail in doing justice. A term applied to an inferior court in the old books. *Glanv.* lib. 12, c. 1. *Bract.* fol. 105, 313 b, 329 b. 1 *Reeves' Hist.* 171.

In the ancient law of France, the appeal of default of justice, (*de defaute de droit*,) was a proceeding when the court of a particular lord deferred, evaded, or refused to do justice to the parties. *Esprit des Loix*, liv. 28, c. 28.

DE RECTO PATENS, *Breve*. L. Lat. Writ of right patent. *Reg. Orig.* 1. See

Patent. Called the highest writ in law. *F. N. B.* 1.

DE RECTO DE DOTE, *Breve.* L. Lat. Writ of right of dower. *Reg. Orig.* 3. *F. N. B.* 7, E. *Bract.* fol. 313. See *Dower, Writ of Right.*

DE RECTO DE RATIONABILI PARTE, *Breve.* L. Lat. Writ of right, of reasonable part. A writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee simple, where one was deprived of his or her share by another. *Reg. Orig.* 3 b. *F. N. B.* 9, B. *Roscoe's Real Act.* 25. Abolished by statute 3 & 4 Will. IV. c. 27.

DE RECTO DE ADVOCATIONE, *Breve.* L. Lat. Writ of right of advowson. *Reg. Orig.* 29 b. A writ which lay for one who had an estate in an advowson to him and his heirs in fee simple, if he were disturbed to present. *F. N. B.* 30, B. *Roscoe's Real Act.* 26. Abolished by statute 3 & 4 Will. IV. c. 27.

DE REDISSEISINA, *Breve.* L. Lat. Writ of re-disseisin. A writ which lay where a man recovered by assise of novel disseisin land, rent or common, and the like, and was put in possession thereof by verdict, and afterwards was disseised of the same land, rent or common, by him by whom he was disseised before. *Reg. Orig.* 206 b. *F. N. B.* 188, B.

DE REPLEGIARE, (or REPLEGIARI) *Breve.* L. Lat. Writ of replevin. *Fleta*, lib. 2, c. 43, § 3. *Reg. Orig.* 81. *F. N. B.* 68, D. See *Replegiare, Replevin.*

DE RESCUSSU, *Breve.* L. Lat. Writ of rescue or rescous. A writ which lay where cattle distrained, or persons arrested, were rescued from those taking them. *Reg. Orig.* 117, 118. *F. N. B.* 101, C. G.

DE RETORNO HABENDO. L. Lat. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods replevied; and to the writ or execution issued thereon. 2 *Tidd's Pr.* 993, 1038. 3 *Bl. Com.* 149. Applied also to the sureties given by the plaintiff, on commencing the action. *Id.* 147.

DE RIEN CULPABLE. L. Fr. Guilty of nothing; not guilty. *Yearb.* H. 7 Edw. II. 224. *Keilw.* 3 b.

DE RIGORE JURIS. Lat. In strictness of law. "*De rigore juris*, they ought to bring him in before; but, *per gratiam*

curiæ, it is well enough at any time before the *sci. fa.* is awarded." *Jonea, J. Latch*, 150.

DERIVIS. Lat. Of water-courses. *Dig.* 43. 21.

DE SALVA GARDIA, *Breve.* L. Lat. Writ of safeguard. A writ in the nature of a protection, which was allowed to strangers seeking their right by course of law in England, and apprehending violence or injury to their persons or property from others. *Reg. Orig.* 26. See *Safeguard.*

DE SALVO CONDUCTU, *Breve.* L. Lat. Writ of safe conduct. *Reg. Orig.* 25 b, 26. See *Safe conduct.*

DE SA VIE. L. Fr. Of his or her life; of his own life; as distinguished from *pur autre vie*, for another's life. *Litt. sect.* 35, 36. *Crabb's Hist.* 383.

DE SCACCARIO. L. Lat. Of, or concerning the exchequer. The title of a statute passed in the 51st year of Henry III. 2 *Reeves' Hist.* 61.

DE SCUTAGIO HABENDO, *Breve.* L. Lat. Writ for having (or to have) escuage or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes, or to pay escuage, that is, a sum of money. *F. N. B.* 83, C. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escuage or scutage. *Reg. Orig.* 88. *F. N. B.* 83, D. F.

DE SE BENE GERENDO. L. Lat. For behaving himself well; for his good behaviour. *Yelv.* 90, 154.

DE SECTA AD MOLENDINUM, *Breve.* L. Lat. Writ of suit at mill. A writ for compelling suit to a mill. *Reg. Orig.* 153. *F. N. B.* 122, M. 3 *Bl. Com.* 235. See *Secta ad molendinum.* Abolished by statute 3 & 4 Will. IV. c. 27.

DE SECUNDA SUPERONERATIONE, *Breve.* L. Lat. Writ of second surcharge. A writ which lay where admeasurement of pasture had been made, and he that first surcharged the common, did it a second time, notwithstanding the admeasurement. *Reg. Orig.* 157. *F. N. B.* 126, E. 3 *Bl. Com.* 239. 2 *Reeves' Hist.* 198.

DE SERVITIO REGIS. L. Lat. [*L. Fr. de service le roy.*] Of the king's service. A species of essoin, or excuse for a defendant's non-appearance in court, the ground of which was that he was neces-

sarily detained in the king's service. *Glanv.* lib. 1, c. 27. *Bract.* fol. 338 b. *Spelman*, voc. *Essoniare*. 1 *Reeves' Hist.* 118.

De similibus ad similia eadem ratione procedendum est. From like things to like things we are to proceed by the same rule or reason; [i. e. we are allowed to argue from the analogy of cases]. *Branch's Princ.*

De similibus idem est judicandum. Of [respecting] like things, [in like cases.] the judgment is to be the same. 7 *Co.* 18.

Both these maxims seem to be embraced in, if not derived from, the following passage of Bracton, in which that author, at the commencement of his work, lays down a fundamental principle of the common law: *Si similia evenierint*, per simile judicentur, *cum bona sit occasio* a similibus procedere ad similia; if like cases have occurred, they [the new cases] are to be judged by the like rule, since it is a good occasion [or proper course] to proceed from like things to like. *Bract.* fol. 1 b.

DE SON COUNSEL (or COUNSAIL). L. Fr. Of his counsel. *Yearb.* M. 5 Edw. III. 75.

DE SON DONE. L. Fr. Of his gift. See *Sur cognizance*, &c.

DE SON GREÉ. L. Fr. Of his own accord. *Keilw.* 2, pl. 4.

DE SON TORT. L. Fr. Of his [own] wrong. A stranger who takes upon him to act as an executor without any just authority, is called an executor of his own wrong, (*de son tort*). 2 *Bl. Com.* 507. 2 *Steph. Com.* 244.

DE SON TORT DEMESNE. L. Fr. Of his own wrong. *De son tort demesne*, *sans tiel cause*; of his own wrong, without such cause. See *De injuria sua propria*, &c.

DE STAPULIS. L. Lat. Of staples. The title of a statute passed 27 Edw. III. st. 2; containing a complete code of laws for the regulation of the merchants who attended the *staples* of wool, after their transfer from Flanders to England. *Baringt. Obs. Stat.* 282.

DE STATUTO, Brevia. L. Lat. Writs founded upon statute. *Reg. Orig.* 173—188.

DE STATUTO MERCATORIO, Breve. L. Lat. Writ of statute-merchant. A writ which lay for imprisoning him who had forfeited a statute-merchant bond, until the debt was satisfied. *Reg. Orig.* 146 b. There are several writs under this

head. *Id.* 148. *Reg. Jud.* 8. See *Statute-merchant*.

DE STATUTO STAPULÆ, Breve. L. Lat. Writ of statute staple. A writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute staple. *Reg. Orig.* 151. See *Statute staple*.

DE SUPERONERATIONE PASTURÆ, Breve. L. Lat. Writ of surcharge of pasture. A judicial writ which lay for him who was impleaded in the county court, for surcharging a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the courts at Westminster. *Reg. Jud.* 36 b.

DE SUPERSEDENDO, Breve. L. Lat. Writ of supersedeas. *Reg. Orig.* 274—278. See *Supersedeas*.

DE SYLVA CÆDUA, Breve. L. Lat. Writ concerning coppice wood. *Reg. Orig.* 44. See *Sylva cædua*.

DE TABULIS EXHIBENDIS. Lat. Of showing the tablets of a will. *Dig.* 43. 5.

DE TALLAGIO NON CONCEDENDO. L. Lat. Of not granting tallage. The title of a statute passed in the 34th year of Edward I. st. 4, declaring that no tallage or aid should be imposed or levied by the king, or his heirs, without the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the commons of the realm. It contained also important general declarations in favor of liberties claimed by the subject. 2 *Inst.* 532. 2 *Reeves' Hist.* 104, 105. See *Blackst. Magna Charta*, Introd. xcvi.—c.

DE TEMPORE CUJUS CONTRARIUM MEMORIA HOMINUM NON EXISTIT. L. Lat. From time whereof the memory of men does not exist to the contrary. *Litt. sect.* 170. See *infra*.

DE TEMPS DONT MEMOIRE NE COURT. L. Fr. From time whereof memory runneth not; time out of memory of man. *Litt. sect.* 143, 145, 170. *Dyer*, 70.

DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA. L. Lat. From time to time, and at all times. *Towns. Pl.* 17.

DE TERMINO. L. Lat. Of the term. *Hardr.* 1.

DE TERRA SANCTA. Lat. Of the Holy land. A species of *essoin*, the ground of which was that the party had gone to

the Holy land. *Glanv.* lib. 1, c. 29. *Bract.* fol. 339. *Spelman*, voc. *Essoiare*. See *Essoin*.

DE TESTAMENTIS. Lat. Of testaments. The title of the fifth part of the Digests or Pandects; comprising the twenty-eighth to the thirty-sixth books, both inclusive.

DE THEOLONIO, Breve. L. Lat. Writ of toll. A writ of trespass which lay where a person was prevented from taking toll. *Reg. Orig.* 103.

DE TRANSCRIPTO PEDIS FINIS LEVATI MITTENDO, Breve. L. Lat. A writ for sending the transcript of the foot of a fine levied. *Reg. Orig.* 169.

DE TRANSGRESSIONE, Breve. L. Lat. Writ of trespass. *Reg. Orig.* 92—111. See *Trespass*.

DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM, Breve. L. Lat. The name of a writ or commission for hearing and determining any outrage or misdemeanor. 2 *Reeves' Hist.* 170. See *Ad audiendum et terminandum, Oyer and Terminer*.

DE ULTRA MARE, [or DE TRANS MARE; L. Fr. de outre la mer.] L. Lat. Of beyond sea. A species of *essoin*, the ground of which was that the party was detained in parts beyond the seas. *Glanv.* lib. 1, c. 25. *Bract.* fol. 339. *Fleta*, lib. 6, c. 8. *Spelman*, voc. *Essoiare*. 1 *Reeves' Hist.* 118, 406. See *Essoin*.

DE UXORE RAPTA ET ABDUCTA, Breve. L. Lat. A writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. *Reg. Orig.* 97. *F. N. B.* 89, O. 3 *Bl. Com.* 139.

DE VASTO, Breve. L. Lat. Writ of waste. A writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed waste in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinherison (*ad exheredationem*) of the plaintiff. *Reg. Orig.* 72—75. *Reg. Jud.* 17 b. *F. N. B.* 55, C. 3 *Bl. Com.* 227, 228. Abolished by statute 3 & 4 Will. IV. c. 27. 3 *Steph. Com.* 506.

DE VENTRE INSPICIENDO, Breve. L. Lat. Writ of (or for) inspecting the belly. A writ which a presumptive heir may have in England, to examine a widow

suspected of feigning herself pregnant, (with a view to produce a supposititious heir to the estate,) in order to ascertain whether she be with child or not. 1 *Bl. Com.* 456. 2 *Steph. Com.* 318. *Reg. Orig.* 227. *Bract.* fol. 69 b. *Fleta*, lib. 1, c. 15. This writ seems to have been derived from the civil law. See *Dig.* 25. 4, *De inspiciendo ventre, &c.*

A writ of the same nature might be issued in cases where a woman sentenced to be executed, pleaded pregnancy. See 4 *Bl. Com.* 495. A writ of this kind was issued in the early American case of Bathsheba Spooner, who was convicted of the murder of her husband, at Brookfield, Mass. in 1778. 2 *Chandler's Am. Crim. Trials*, 381.

DE VERBO IN VERBUM. L. Lat. Word for word. *Bract.* fol. 138 b. Literally, from word to word. (L. Fr. *de mot en mot*.) *Fleta* uses the phrase *de verbo ad verbum*. Lib. 1, c. 21, § 3.

DE VERBORUM SIGNIFICATIONE. Of the signification of words. An important title of the Digests or Pandects, (*Dig.* 50. 16,) consisting entirely of definitions of words and phrases used in the Roman law, compiled from the writings of the best jurists, such as Ulpian, Paulus, Pomponius, Gaius, Scævola, Javolenus, Celsus, Alfenuus, Florentinus, Callistratus and others.

DE VICINETO. L. Lat. From the neighborhood, or vicinage. 3 *Bl. Com.* 360. A term applied to a jury. See *Vicinetum*.

DE VI LAICA AMOVENDA, Breve. L. Lat. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of laymen, and held out the other *vi et armis*; then he that was holden out had this writ directed to the sheriff, that he remove the force. *Reg. Orig.* 59. *F. N. B.* 54, D.

DE VIRIDARIO ELIGENDO, Breve. L. Lat. Writ to elect a verderor. *Reg. Orig.* 177 b. *F. N. B.* 164, C.

DE VIRIDI ET VENATIONE. L. Lat. Of vert and venison. Of, or relating to the green-sward of the king's forests, and the king's deer. *Cart. de Forest.* 9 Hen. III. 4 *Inst.* 289. 2 *Bl. Com.* 71, 72. A term of the old forest law. See *Vert & Venison*.

DE VISINETU. L. Lat. Of the vicinage. *Reg. Orig.* 32 b. *Reg. Jud.* 4. *De*

visneto. Fleta, lib. 2, c. 62, § 3. See *De vicineto*.

DE WARRANTIA CHARTÆ, *Breve*. L. Lat. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty, [in the charter of feoffment,] and was afterwards impleaded in an assise or other action, in which he could not *vouch* or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel them to warrant the land unto him. *Reg. Orig.* 157 b. *F. N. B.* 134, D. *Termes de la Ley*, voc. *Warrantia chartæ*. *Cowell*. *Blount*. 3 *Reeves' Hist.* 55. Abolished by statute 3 & 4 Will. IV. c. 27.

DE WARRANTIA DIEI, *Breve*. L. Lat. Writ of warranty of day; or of warranty of default for a day. An ancient writ which lay where one having a day assigned personally to appear in court to an action, was, in the mean time, employed in the king's service, so that he could not come at the day appointed. It was directed to the justices, commanding them not to put the party in default for his absence on that day, because, as to that matter, the king warranted to him that day. *Reg. Orig.* 18, 19. *F. N. B.* 17.

DEACON. [Lat. *diaconus*, from Gr. *διακόνος*.] In ecclesiastical law. A minister or servant in the church, whose office is to assist the priest in divine service and the distribution of the sacrament. It is the lowest order in the church of England. *Wharton's Lex.* *Brande*.

DEAD-BORN. See *Mortuus exitus*.

DEAD-FREIGHT. In maritime law. A kind of freight payable by the charterer of a vessel, when the cargo in respect of which it is payable, or some part of it, has, from some cause, on the part of the charterer, not been conveyed as provided. *Jacobson's Sea Laws*, 287—292. 3 *Campb.* 428.

DEAD LETTERS. See Acts of Congress, March 3, 1825, sess. 2, ch. 64, sec. 26, and July 2, 1836, sess. 1, ch. 270.

DEADLY FEUD. [Lat. *faida mortalis* or *mortifera*.] A profession of irreconcilable hatred against an enemy, until revenge were obtained even by his death. This was allowed by the ancient Saxon laws, where a man had been killed, and no pecuniary satisfaction had been made to his kindred. *Spelman*, voc. *Faida*. The term was also applied to the predatory warfare carried on in the northern borders of Eng-

land. *Stat. 43 Eliz.* c. 13. 4 *Bl. Com.* 244. See *Faida*.

DEAD MAN'S PART, or **DEATH'S PART**. In English law. That portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statute 1 Jac. II. c. 17, declared that the same should be subject to the statute of distributions. 2 *Bl. Com.* 518. 2 *Steph. Com.* 254. 4 *Reeves' Hist. Eng. Law*, 83. A similar portion in Scotch law is called *dead's part*, (q. v.)

DEADPLEDGE. [L. Lat. *mortuum vadium*.] A mortgage. See *Mortgage*, *Mortuum vadium*.

DEAD'S PART. In Scotch law. That portion of the property of a deceased person which remained over the *jus relictæ* (share of the widow), and the children's *legitim*, (lawful portion); and so called because the deceased had full power over it, and might give it to whom he pleased. *Ersk. Inst.* b. 3, tit. 9, §§ 15, 18.

DEADVOCARE. L. Lat. [from *de* priv. and *advocare*, to advocate or acknowledge.] In old English law. To abandon a cause, (*causam deserere*), or give up its advocacy. *Spelman*.

To disavow, or disclaim; to refuse to acknowledge. *Id.* To refuse to acknowledge a lord or superior; to disclaim to hold of him. *Bract.* fol. 82, 203 b. *Fleta*, lib. 2, c. 44, § 6. To disown a child. *Bract.* fol. 278.

DE-AFFOREST. [L. Lat. *deafforestare*, *deforestare*.] In English law. To discharge from being a forest; to release or exempt from the forest law. *Stat. 17 Car. I.* c. 18. *Reg. Jud.* 83 b. See *Disafforest*.

DEAFFORESTARE. L. Lat. In old English law. To de-afforest or disafforest. *Omnes forestæ quæ aforestatæ sunt tempore nostro, statim deafforestentur*; all forests which have been afforested in our time shall be forthwith disafforested. *Mag. Cart. Johan.* c. 47.

DEALBARE. L. Lat. [from *albus*, white.] In old English law. To whiten or make white. *Dealbare firmam*; to whiten rent or farm; that is, to convert the base money in which rent (*firma*) was paid, into silver (*white money*) or its value: to

reduce it to the fineness of standard silver by melting it down in the exchequer, or make it equal to silver by paying the difference in value. *Cowell*, voc. *Blanche Firmes*. *Spelman*. *Lib. Niger Scacc.* cited *ibid.* *Mem. in Scacc.* H. 12 *Edw.* I. An obsolete term of the exchequer. See *Alba firma*.

DEALINGS. Transactions in the course of trade or business. Held to include payments to a bankrupt. *Mood. & M.* 137. 3 *Carr. & P.* 85.

DEAN. [Lat. *decanus*; Gr. *δεκανος*, from *deka*, ten.] In English ecclesiastical law. An ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend ten canons or prebendaries. 1 *Bl. Com.* 382. *Co. Litt.* 95. *Spelman*, voc. *Decanus*. See *Decanus*.

DEAN AND CHAPTER. [L. Lat. *decanus et capitulum*.] In English ecclesiastical law. A spiritual corporation constituting the council of a bishop, to assist him with their advice in affairs of religion; and also in the temporal concerns of his see. 1 *Bl. Com.* 382. 3 *Co.* 74, 75. *Co. Litt.* 103, 400. 3 *Steph. Com.* 67. 1 *Wooddes. Lect.* 182. *Spelman*, voc. *Decanus*. *Wharton*. Dean and chapter now supply the place of prior and convent. 3 *Co.* 74.

DEAN OF THE ARCHES. The presiding judge of the Court of Arches in England. See *Arches Court*.

By the act of 3 & 4 *Vict.* c. 65, the Dean of Arches is made an assistant judge of the court of admiralty. 3 *Steph. Com.* 727. 1 *Kent's Com.* 371, and note.

DEATH BED. In Scotch law. A state of sickness which ends in death. *Ersk. Inst.* b. 3, tit. 8, § 95.

DEATHBED DEED. In Scotch law. A deed made by a person while laboring under a distemper of which he afterwards died. *Ersk. Inst.* lib. 3, tit. 8, § 96. A deed is understood to be in death bed, if, before signing and delivery thereof, the grantor was sick, and never convalesced thereafter. 1 *Forbes' Inst.* part 3, b. 2, c. 4, tit. 1, sec. 1. But it is not necessary that he should be actually confined to his bed at the time of making the deed. *Bell's Dict.*

DEB'A. A contraction of *Debita*. 1 *Instr. Cler.* 9.

DEBAS, *Debase*. L. Fr. Below; under; beneath. *Kelham*.

DEBASSA. L. Fr. Downwards. *Kelham*.

DEBATUM. L. Lat. [from Fr. *debatre*.] In old European law. A dispute or controversy. *Spelman*.

DEBENT. Lat. [from *debere*, to owe.] In old English law. They owe; they ought. *Sicut esse debent et solent*; as they ought to be, and use to be. *Fleta*, lib. 5, c. 41, § 1.

DEBENTURE. [from Lat. *debere*, to owe.] A custom-house certificate, entitling the exporter of imported goods to a drawback of duties paid on their importation. *Act of Congress*, March 2, 1799, s. 80. *Stat.* 3 & 4 *Will.* IV. c. 52, § 86. See *Drawback*.

An instrument in use in some government departments, by which government is charged to pay to a creditor or his assigns, the sum found due on auditing his accounts. *Brande. Blount*.

DEBET. Lat. [from *debere*, to owe.] He owes; owes. *Nil debet*, (q. v.) he owes nothing. See *infra*.

He ought; it ought; there ought; one ought; ought. See the maxims *infra*.

DEBET ET DETINET. L. Lat. He owes and detains. Words anciently used in the original writ, (and now, in English, in the plaintiff's declaration,) in an action of debt, where it was brought by one of the original contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his heirs, if they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, &c. The declaration in such cases states that the defendant "owes to," as well as "detains from" the plaintiff the debt or thing in question; and hence the action is said to be "in the *debet et detinet*." *F. N. B.* 119, G. 3 *Bl. Com.* 155. Where the declaration merely states that the defendant detains the debt, (as in actions by and against an executor for a debt due to or from the testator,) the action is said to be "in the *detinet*" alone. *Id. ibid.* *Tomlin*. See *Detinet*.

DEBET ET SOLET. L. Lat. He owes and is used, [or has been used to do]. Words anciently used in writs, showing both a right and a custom as the ground of the claim; as in the writs *De secta ad molendinum*, *De molendino, domo, et postu reparanda*, &c. *Reg. Orig.* 153.

Where a person sued to recover any right whereof his ancestor was disseised by

the tenant or his ancestor, he used only the word *debet* in his writ, *solet* not being proper because his ancestor was disseised and the estate discontinued. But if he sued for any thing that was for the *first time* denied him, he used both the words *debet et solet*, because his ancestor before him, as well as he himself had *usually enjoyed* the thing for which he sued, until the present refusal of the tenant. *Termes de la Ley. Old N. B.* 98. *F. N. B.* 122, M. 123. See *Debent*.

Debet esse finis litium. There ought to be an end of suits; there should be some period put to litigation. *Jenk. Cent.* 61. See *Interest reipublicæ ut sit finis litium*.

Debet quis juri subjacere ubi delinquit. One [every one] ought to be subject to the law [of the place] where he offends. 3 *Inst.* 34. This maxim is taken from Bracton. *Bract.* fol. 154 b.

DEB'L A contraction of *Debiti*. 1 *Inst. Cler.* 9.

Debile fundamentum fallit opus. A weak foundation frustrates [or renders vain] the work [built upon it]. *Shep. Touch.* 60. *Noy's Max.* 5, max. 12. *Finch's Law*, b. 1, ch. 3. When the foundation fails, all goes to the ground; as where the cause of action fails, the action itself must of necessity fail. *Wingate's Max.* 113, 114, max. 40. *Broom's Max.* 80, [135].

DEBITA. Lat. [pl. of DEBITUM, q. v.] Debts.

DEBITA FUNDI. L. Lat. In Scotch law. Debts secured upon land. *Ersk. Inst. b.* 4, tit. 1, § 11.

DEBITA LAICORUM. L. Lat. In old English law. Debts of the laity, or of lay persons. Debts recoverable in the civil courts were anciently so called. *Crabb's Hist. Eng. Law*, 107.

Debita sequuntur personam debitoris. Debts follow the person of the debtor; that is, they have no locality, and may be collected wherever the debtor can be found. 2 *Ken's Com.* 429. *Story's Conf. Laws*, § 362.

DEBITO MODO. Lat. In due manner; duly. *Debito modo electus*; duly elected. 7 *East*, 345. *Debito aut legitimo modo*; in a due or lawful manner.

DEBITOR. Lat. [from *debere*, to owe.] In civil and old English law. A debtor. *Fleta*, lib. 2, c. 64. *Debitor intelligatur is à quo invito exigi pecunia potest*; a debtor may be understood to be one from whom money may be exacted against his will.

Dig. 50. 16. 108. *Capitalis debitor*; a principal debtor. *Magna Charta*, c. 8.

Debitor non præsumitur donare. A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. 1 *Kames' Equity*, 212. See 1 *P. Wms.* 279. Where a debtor gives money or goods, or grants bond to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed. *Ersk. Inst.* b. 3, tit. 3, § 93.

DEBITRIX. Lat. [from *debere*, to owe.] In the civil law. A female debtor. *Dig.* 16. 1. 24, pr. *Id.* 49. 14. 47, pr. *Creditrix*; a female creditor. *Cod.* 8. 46. 2.

DEBITUM. Lat. [from *debere*, to owe.] In old English law. A thing due or owing; a debt. *Inst.* 3. 15. 1. *Stat. Westm.* 2, c. 18. *Ad debitum reddendum*; to pay the debt. *Mag. Cart.* 9 *Hen.* III. c. 8. See *Debitor*.

Debitum et contractus sunt nullius loci. Debt and contract are of [belong to] no place; have no particular locality. The obligation in these cases is purely personal, and actions to enforce it may be brought any where. 2 *Inst.* 231. *Story's Conf. Laws*, § 362. 1 *Smith's Lead. Cas.* 340, 363. *Broom's Max.* 414, note. Verbal contracts are, for the purpose of jurisdiction, *nullius*, or rather *uniuscujusque loci*. 7 *Man. & Gr.* 1019, note.

DEBITUM FUNDI. Lat. In Scotch law. A debt of the ground; a debt which is a charge upon real estate. *Bell's Dict.*

DEBITUM IN PRÆSENTI, SOLVENDUM IN FUTURO. L. Lat. A debt due at present, to be paid in future. A term applied to obligations which are absolute or perfect when contracted, though not payable before a certain future day, as bonds and notes. *Co. Litt.* 292 b. 1 *Burr.* 228. 2 *M. & S.* 149.—The right of the government to duties on imported goods accrues, in the fiscal sense of the term, on the arrival of the goods in the proper port of entry; yet it is but a *debitum in præsentī, solvendum in futuro*, according to the requisition of the revenue collection act of March 2, 1799, ch. 128; and, therefore, if a deposit of the goods is made by the importer, or a bond is given by him for the duties, pursuant to the provisions of that act, the importer is entitled to the full credit allowed by that act. *Story*, J. 13 *Peters' R.* 494. Rent, before the appoint-

ed day of payment is not *debitum in presenti, solvendum in futuro*; but is a contingent claim liable to be wholly defeated by many intervening acts or events. 11 *Mass.* 493. *Co. Litt.* 292 b.

DEB'O. A contraction of *Debito*. 1 *Inst. Cler.* 9.

DEBOTER. L. Fr. To hinder. *Debole*; hindered. *Britt.* c. 40.

DEBRUSER. L. Fr. To break. *Ceux queuz ont debruse la prison*; those who have broken the prison. *Stat. Westm.* 1, c. 15. *Britt.* c. 11.

To break down, as a hedge. *Ses haies debruseront.* *Yearb.* T. 1 Edw. II. 8.

To break to pieces. L. Fr. *Dict.*

DEBRUSURE. L. Fr. [from *debruser*, q. v.] A breaking. *Britt.* c. 1.

DEBT. [Lat. *debitum*; L. Fr. *det, dett, dette.*] A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. 3 *Bl. Com.* 154. Debt is otherwise described by Sir William Blackstone, as a species of *contract*, whereby a chose in action, or right to a certain sum of money is mutually acquired and lost. 2 *Bl. Com.* 464. See *Smith's Merc. Law*, 319. This, however, as Mr. Stephen observes, conveys no accurate idea of the meaning of the term; a debt not being a contract, but the *result* of a contract. 2 *Steph. Com.* 187, note. *Id.* 186.

The word "debt" is of large import, including not only debts of record, or judgments, and debts by specialty, but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. Hubbard, J. 3 *Metcalf's R.* 522, 526. See 1 *Bell's Appeal Cases*, 295, arg.

DEBT. [L. Lat. *breve, seu actio de debito.*] In practice. The name of an action which lies at law to recover a certain specific sum of money; or a sum that can readily be reduced to a certainty. 3 *Bl. Com.* 154. 3 *Steph. Com.* 461. 1 *Tidd's Pr.* 3. 1 *Archb. N. Prius*, 200. *Browne on Actions*, 333. *Smith on Contracts*, 297.

DEBT OF RECORD. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 *Bl. Com.* 465.

DEBT BY SPECIALTY, or *special con-*

tract. A debt due, or acknowledged to be due, by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 3 *Bl. Com.* 465. See *Specialty*.

DEBT BY SIMPLE CONTRACT. A debt or obligation arising upon a contract which is ascertained by mere oral evidence; or upon some written agreement or contract not under seal.* 2 *Bl. Com.* 465. See *Simple contract*.

DEBT EX MUTUO. L. Lat. A species of debt or obligation mentioned by Glanville and Bracton, and which arose *ex mutuo*, out of a certain kind of loan. *Glanv.* lib. 10, c. 3. *Bract.* fol. 99. See *Mutuum, Ex mutuo*.

DEBTTEE. [L. Fr. *dettee.*] A person to whom a debt is due; a creditor. 3 *Bl. Com.* 18. *Plowd.* 543. Not used.

DEBTOR. [Lat. *debitor*; L. Fr. *debtour.*] A person who owes a sum of money, or is indebted to another.

DEBTOR IN SOLIDO. See *In solido*.

DEBIT. Lat. [from *debere*, to owe.] He owed. Held, in the civil law, to include every species of action (*omnem omnino actionem comprehendere intelligitur*). *Dig.* 50. 16. 178. 3.

DECA, *Deca, Decha*. L. Fr. On this side; from this; hence. *Deca la meer*; on this side of the sea. *Britt.* c. 123.

DECANATUS. L. Lat. [from *decanus*, q. v.] A deanery. *Spelman*.

A company of ten persons. *Calvin, Lex. Jurid.*

DECANIA. L. Lat. [from *decanus*, q. v.] The office, jurisdiction, territory or command of a *decanus*, or dean. *Spelman*. See *Decanus*.

DECANUS. Lat. In the Roman law. An officer who had the command of ten soldiers, the number assigned to each tent in an encampment; otherwise called *contubernium*, answering nearly to the modern *mess*. *Adam's Rom. Ant.* 403.

An officer at Constantinople, who had charge of the burial of the dead. See *Nor.* 59, c. 2.

Decani and the *corpus decanorum* are mentioned in the twenty-seventh title of the twelfth book of the Code of Justinian, but the nature of the office is not described.

DECANUS. Lat. [from Gr. *δεκανος*, from *δεκα*, ten.] In civil, ecclesiastical, and old European law. An officer having supervision over *ten*; a dean. A term applied

not only to ecclesiastical, but to civil and military officers. *Spelman.*

Decanus monasticus; a monastic dean, or dean of a monastery; an officer over ten monks. *Spelman. Calvin, Lex. Jurid.*

Decanus in majori ecclesia; dean of a cathedral church, presiding over ten prebendaries. *Spelman. See Dean.*

Decanus episcopi; a bishop's or rural dean; presiding over ten clerks or parishes. *Spelman. Lyndewode Prov. lib. 1, tit. de constit. c. 1, verb. Decanos rurales. See Rural deans.*

Decanus friborgi; dean of a friborg. An officer among the Saxons, who presided over a friborg, tithing, decennary, or association of ten inhabitants; otherwise called a tithing man, or borsholder, (Lat. *decurio, capitalis friborgus, friborgi caput*, qq. v.) *Spelman. LL. Edw. Conf. cited ibid. See Friborg.*

Decanus militaris; a military officer, having command of ten soldiers. *Spelman. Vegetius, lib. 2, c. 13. Calv. Lex. Jurid. See Decanus, supra.*

DECEASE. [from L. Fr. *deces, decees*; Lat. *decessus*, qq. v.] Death; departure from life.

To DECEASE. To die; to depart life, or from life. This has always been a common term in Scotch law. "Gif ane man deceasis." *Skene de Verb. Sign. voc. Eneya.*

DECEDENS. Lat. [from *decedere*, q. v.] In old English law. Dying; a person dying; a deceased or defunct person; a decedent. *Cum post mortem alicujus decedentis intestati*; when after the death of a person dying intestate. *Stat. Westm. 2, c. 19. Fleta, lib. 2, c. 62, § 13.*

DECEDENT. Deceased; properly, deceasing; a deceased or dead person.

This term, which is becoming a common one in our jurisprudence, is closely formed from the Latin participle *decedens*, (q. v.) and like that, strictly signifies "deceasing." The form of the present participle given to this word may be traced to the Greek of the Novels of Justinian, in which *τελευτῶν* was the term used to signify a person who had died or was dead. *See Nov. 39, pr. Nov. 1, c. 1, §§ 3, 4. Nov. 48, pr. Nov. 59, pr.* It will be seen, however, that it was not adopted in the Latin, being uniformly translated by the past or passive participle *defunctus*, which was the proper word in the Roman law, to signify a dead person. *Dig. 40. 15. Cod. 7. 21. Defunctus*, and not *decedens*, was

also the term adopted in old English law. *Fleta, lib. 2, c. 57, passim. See Defunctus.* Hence the Scotch "defunct," which is still used. *Decedens* seems to have always been confined to its proper grammatical sense of a present participle.

DECEDER. L. Fr. To die. *See Deces.*

DECEDERE. Lat. [from *de*, from, and *cedere*, to go.] In the civil law. To depart, (that is, from life, *vita*); to die. *Intestatus decedit*; a man dies intestate. *Inst. 3. 1, pr. Si decesserit*; if he die. *Dig. 2. 8. 4. See Id. 4. 8. 28. Decessit*; (he) died. *Id. 40. 15. 1. 1. Vita* was sometimes expressed, and Brissonius observes that this was a favorite form with Papinian. *Vita decessit*; departed life; died. *Dig. 31. 75. 1. Si Titius ante ipsam vitam decessisset*; if Titius should die before her. *Id. 39. 6. 42, pr. Vita decessit. Cod. 2. 51. See Id. 7. 21.*

In old English law. To die; to de-cease. *Si liber homo intestatus decesserit*: if a freeman die intestate. *Fleta, lib. 2, c. 57, § 10. Si debitor intestatus decedat. Id. c. 62, § 12.*

DECEES. L. Fr. Decease; death. *Yearb. H. 3 Edw. II. 70.*

DECEIT. [L. Fr. *disceit*; Lat. *deceptio*.] In old English law. A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than *deceit* to distinguish the offence. *West's Symbol. part 2, tit. Indictments, § 68. Cowell. Jacob.*

DECEIT, *Disceit*. [L. Lat. *breve de deceptione*.] In old practice. The name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. *Roscoe's Real Act. 136. 3 Bl. Com. 166. Reg. Jud. 18. See Reg. Orig. 113. Abolished by statute 3 & 4 Will. IV. c. 27.*

The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed *deceitfully*, either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs); or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. *3 Bl. Com. 166. Reg. Orig. 112—116. F. N. B. 95, E. 98. This has,*

in modern times, given place to an action on the case in the nature of deceit. *Bull. N. P.* 30. 1 *Archb. N. Prius*, 440. 2 *Kent's Com.* 483, note.

DECEM TALES. L. Lat. (Ten such; or ten tales [jurors].) In practice. The name of a writ which issues in England, where, on a trial at bar, *ten* jurors are necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 *Bl. Com.* 364. *Reg. Jud.* 30 b. 3 *Steph. Com.* 602.

DECEMVIRI LITIBUS JUDICANDIS. Lat. In the Roman law. Ten persons (five senators and five *equites*) who acted as the council or assistants of the prætor, when he decided on matters of law. *Hallifax, Anal.* b. 3, c. 8. According to others, they were themselves judges. *Calv. Lex.*

DECENNA. L. Lat. [from *decem*, ten.] In old English law. A tithing or decennary; the precinct of a frank-pledge; consisting of ten freeholders with their families, the head of which was called chief-pledge. *Spelman. Bract.* fol. 124 b. *Fleta*, lib. 2, c. 52, § 5. 2 *Inst.* 73. 1 *Bl. Com.* 114. See *Decennary*, *Tithing*, *Frank-pledge*, *Friborg*.

DECENNARIUS, *Decinarius*. L. Lat. A deciner; one of the ten freeholders composing a decennary; otherwise called a handborowe. *Spelman. Id. voc. Handborowe*. See *Deciner*, *Frank-pledge*.

DECENNARY. [L. Lat. *decenna*.] A tithing, composed of ten neighboring families. 1 *Reeves' Hist.* 13. 1 *Bl. Com.* 114.

DECENNIER. See *Deciner*.

DECEPTIO. Lat. Deceit. See *Deceit*.

DECERN. [from Lat. *decernere*, q. v.] In Scotch law. To decree. "Decernit and ordainit." 1 *How. St. Trials*, 927. "Decerns." *Shaw's R.* 16.

DECERNERE. Lat. In civil and old English law. To decree; to decide. *Dig.* 1. 4. 1. 1. *Rex decernit*; the king decrees. *Artic. Cleri*, c. 7.

DECES. L. Fr. Decease; death. *Britt.* c. 93.

DECESSUS. Lat. [from *decedere*, to depart.] In the civil law. Decease; death. *Dig.* 33. 2. 34. Rarely used.

In old English law. Decease; death. *Post meum decessum*; after my decease. *Fleta*, lib. 3, c. 9, § 5; c. 17, § 1.

Departure. 3 *Salk.* 123. See *Departure*.

DECET. Lat. It is becoming; it is proper. *Decet tamen principem servare le-*

ges quibus ipse solutus est; yet it is becoming for the prince to observe the laws from which he himself is released. 1 *Bl. Com.* 239. Blackstone quotes this as the language of Paulus, *Dig.* 32. 23. The passage referred to runs thus: *Decet enim tantæ majestati eas servare leges, quibus ipse solutus esse videtur*; for it is becoming even to majesty to observe those laws from which it seems to be itself released.

DECIDERE. Lat. In the civil law. To decide; to determine judicially. *Cod.* 3. 26. 5.

In old English law. To decide; to determine, or put an end to. *Bract.* fol. 1 b.

To fall, or fall to; to remain to; to escheat. *Bract.* fol. 84 b. *Stat. Quia Emptores*, c. 2.

DECIENS. L. Fr. Since. *Kelham*.

DECIES TANTUM. L. Lat. (Ten times as much.) In English practice. The name of a writ given by the statute 38 Edw. III. c. 12, 13; (or, according to Mr. Reeves, by 34 Edw. III. c. 8;) which lay against a juror who had taken money of either party for giving his verdict, to recover *ten times as much* as the sum taken. It also lay against embracers for intermeddling with a jury. *Reg. Orig.* 188 b. 3 *Reeves' Hist.* 56. *F. N. B.* 171. *Termes de la Ley*. It was a species of popular action. *Id.* See *Plowd.* 85. The statutes upon which it was founded were repealed by statute 6 Geo. IV. c. 50, § 62. *Wharton's Lex.*

DECILLER LES YEULX. L. Fr. To open the eyes. *Kelham*.

DECIMA. L. Lat. A word used in old records for *decenna*, (q. v.) *LL. Ina*, cited in *Spelman*, *voc. Decanus*.

DECIMÆ. L. Lat. [from *decem*, ten; L. Fr. *dismes*.] In ecclesiastical law. Tenths. The tenth part of the annual profit of livings, or ecclesiastical benefices, formerly claimed of the English clergy by the papal see, and afterwards made a part of the royal revenue. 1 *Bl. Com.* 284, 285. Tenths now form a part of the fund called Queen Anne's bounty. *Id.* 286. 3 *Steph. Com.* 548, 550.

Tithes. *Ecclesia decimas non solvit ecclesiæ*; the church does not pay tithes to the church. A vicar pays no tithes to the rector, nor the rector to the vicar. *Cra. Eliz.* 479, 511. 2 *Bl. Com.* 31. See *Tithes*.

DECIMEUR. L. Fr. The owner of the tithes of a parish. *Kelham*.

DECINER, *Desiner*, *Desnier*, *Desnyer*. Anglo-Norm. [from. Fr. *dismier*; L. Lat.

decennarius.] In old English law. One of a decennary, or tithing; a hand-borow. *Spelman. Termes de la Ley.* See *Decennary, Friborg, Dezyner.*

DECISIVE (or DECISORY) OATH. [L. Lat. *sacramentum decisionis*; Fr. *serment decisoire.*] A mode of trial in the civil law, where one of the parties to the suit, not being able to prove his charge, offered to refer the *decision* of the cause to the oath of his adversary. *Cod. 4. 1. 2. 3 Bl. Com. 342. Hallifax, Anal. b. 3, c. 9, num. 36—38.*—An oath which one of the parties defers or refers back to the other, for the decision of the cause. *Poth. Oblig. part 4, c. 3, sect. 4, art. 1.*—An oath made by a party to a suit, which has the effect of deciding the case. *Meredith's Emerigon on Ins. 26, note. See Sacramentum decisionis.*

DECLAMATIO. L. Lat. In old English law. Proclamation. *Bract. fol. 355 b.*

DECLARATION. [L. Lat. *narratio*; and formerly *intentio, petitio*; L. Fr. *counte, entente.*] In pleading. A plaintiff's statement in writing, or legal specification on record, of the circumstances which constitute his cause of action; called, in real actions, *count*, and anciently *tale*. It is the first of the pleadings in an action at law, and is usually divided into several sections or paragraphs, termed *counts*. It consists of the following formal parts: the title, the venue, the commencement, the statement of the causes of action, the several counts, and the conclusion. 1 *Chitt. Pl. 240, 262, et seq. Steph. Pl. 29. 3 Bl. Com. 293. 3 Steph. Com. 573. See Count.*

DECLARATION. In Scotch practice. The statement of a criminal or prisoner, taken before a magistrate. 2 *Alison's Crim. Pract. 555.*

DECLARATION OF INTENTION. The act by which an alien declares, before a court of record, that he intends to become a citizen of the United States. See 2 *Kent's Com. 64, 65.*

DECLARATION OF TRUST. The creation or acknowledgment of a trust. A declaration by a party who has made a conveyance to another, that the subject conveyed is to be held in trust; specification of the trusts upon which the subject is conveyed. An admission by an individual that a property, the title of which he holds, is held by him as trustee for another.

The instrument or writing by which such declaration or acknowledgment is

made, whether in regular form or otherwise, as by letter. 2 *Crabb's Real Prop. 547, § 1764. 1 Hilliard's Real Prop. 303.*

DECLARATOR. In Scotch law. An action whereby a party prays something to be declared in his favor. *Scotch Dict.*

DECLARATORY ACTION. In Scotch law. An action in which some right is sought to be declared in favor of the pursuer, (or plaintiff,) but nothing is demanded to be paid or performed by the defender, (defendant). *Bell's Dict. Ersk. Inst. b. 5, tit. 1, § 46.* Otherwise called an action of declarator. *Id. ibid.*

DECLARATORY STATUTE. A statute declaratory of the common law. A statute which, instead of introducing a new law, only declares what is the existing law; and the object of which is to remove doubts which have arisen on the subject. 1 *Chitt. Bl. Com. 86, and note.*

It seems to be settled as the sense of the courts of justice in this country, that the legislature cannot pass any declaratory law, or act declaratory of what the law was before its passage, so as to give it any binding weight with the courts. 1 *Kent's Com. 456, note.*

DECLARE. In pleading. To state a plaintiff's cause of action at law, according to the rules of pleading, and the practice of the court. *Declaring* includes not only the preparation of the plaintiff's declaration in proper form, but the exhibition of it to the court by filing, and to the opposite party by service. See *Declaration, Filing, Service.*

DECLARE. To state solemnly before witnesses. In New-York, in order to render the execution of a will or codicil valid, the testator must, at the time of subscribing his name or acknowledging his subscription, declare it to be his last will and testament, or a codicil to his last will, &c. in the presence of each of the two subscribing witnesses. 2 *Rev. Stat. [63,] 7, § 40. 1 Hoffman's Ch. R. 1. 2 Selden's R. 120. See 4 Kent's Com. 515, and notes.*

DECLINATORY PLEA. In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 *Hale's P. C. 236. 4 Bl. Com. 333.* Now abolished. 4 *Steph. Com. 400, note. Id. 436, note.*

DECLINATURE. In Scotch practice. An objection to the jurisdiction of a judge. *Bell's Dict.*

DECLINE. In Scotch practice. To

object to. *Declined*; objected to. A judge may be *declined* as incompetent to decide a cause. *Bell's Dict.*

DECOCTOR. Lat. [from *decoquere*, to waste, break or lose.] In the Roman law. A bankrupt; a spendthrift; one who squandered the public money. *Cod.* 10. 31. 40. *Calv. Lex. Brissonius.* See 1 *P. Wms.* 249, in rec.

DECOLE. L. Fr. Beheaded. *Kelham.*

DECOLLATIO. Lat. [from *de*, off, and *collum*, neck.] In old English and Scotch law. Decollation; the punishment of beheading. *Fleta*, lib. 1, c. 21, § 6. *Decollat'*; beheaded. 1 *Pitt. Crim. Trials*, part 1, p. 10.

DECORIES. L. Fr. Skinned; pulled off. *Kelham.*

DECOUPER. L. Fr. To cut down; to cut off. *Dyer*, 36. *L. Fr. Dict.*

DECREE. [Lat. *decretum*.] In practice. The judgment of a court of equity or admiralty, answering to the judgment of a court of common law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the right of all the parties to the suit, according to equity and good conscience. 2 *Daniell's Chanc. Pr.* 1192.

In the canon law. The first of the two great divisions of the *Corpus Juris Canonici*; more commonly known as Gratian's decree, (*decretum Gratiani*, q. v.) By the decrees of the popes, are meant their decrees in the councils held by them in Italy. *Butler's Hor. Jurid.* 105.

In the civil and Scotch law. The final sentence of a court. See *Decretum*, *Decreet*.

DECREE OF CONSTITUTION. In Scotch practice. A decree by which a debt is ascertained. *Bell's Dict.*

In technical language, a decree which is requisite to found a title in the person of the creditor, whether that necessity arise from the death of the debtor or of the creditor. *Id.*

DECREE OF FORTHCOMING. In Scotch law. The adjudication of the court, after process of arrestment, which entitles the creditor to demand the sum arrested, to be applied for payment of the debt upon which the arrestment and forthcoming proceeded. 2 *Kames' Equity*, 177, 148. *Id.* 182, 194. See *Arrestment*, *Forthcoming*.

DECREET. [from Lat. *decretum*.] In Scotch law. The decree, judgment or sentence of a court. 1 *Brown's R.* 506. See *infra*.

DECREET ABSOLVITOR. In Scotch law. A decree dismissing a claim, or acquitting a defendant. 2 *Kames' Equity*, 367. 1 *Forbes' Inst.* part 4, b. 1, c. 2, tit. 1, sect. 3.

DECREET ARBITRAL. In Scotch law. An award of arbitrators. 1 *Kames' Equity*, 312, 313. 2 *Id.* 367. *Ersk. Inst.* b. 4, tit. 3, § 29. Lord Brougham, 2 *Bell's Appeal Cases*, 49.

DECREET IN ABSENCE. In Scotch law. A decree or sentence, at pronouncing whereof either party is absent. 1 *Forbes' Inst.* part 4, b. 1, c. 2, tit. 1, sect. 3.

DECREMENTUM MARIS. Lat. In old English law. Decrease of the sea; the receding of the sea from the land. *Callis on Sewers*, [53,] 65. See *Reliction*.

DECRES. L. Fr. Decrease. *Kelham.*

DECRETAL ORDER. In chancery practice. An order, in the nature of a decree, made by the court of chancery upon a motion or petition. 2 *Daniell's Ch. Pr.* 637.

DECRETALES. L. Lat. In ecclesiastical law. Decretals; the title of the second of the two great divisions of the *Corpus Juris Canonici*; consisting of the *Decretales Gregorii Noni*, the *Decretales Bonifacii Octavi*, the *Clementinae*, and the *Extravagantes*, (qq. v.) 1 *Mackeld. Civ. Law*, 81, 83, Kaufmann's note. *Hallifax, Anal.* b. 1, c. 1. See *Butler's Hor. Jurid.* 105.

DECRETALES GREGORII NONI. L. Lat. Decretals of Gregory the Ninth. A collection of canon law, published by Pope Gregory IX. A. D. 1234, consisting of five books, each of which is subdivided into titles, and each title into chapters. These decretals contain the papal decrees from the time of Pope Alexander III. and are cited by the name of the title, and the number of the chapter, with the addition of the word *Extra*, or the capital letter X. 1 *Mackeld. Civ. Law*, 83, note. *Hallifax, Anal.* b. 1, c. 1. *Butler's Hor. Jur.* 115. See *Decretals*.

DECRETALES BONIFACII OCTAVI. L. Lat. Decretals of Boniface the Eighth. A collection of canon law, more commonly known as the *Liber Sextus Decretalium*, or *Sextus Decretalium*. See *Sextus Decretalium*.

DECRETALS. [L. Lat. *decretales*.] The title of the second of the two great divisions of the canon law, the first being called the *Decree*, (*decretum*). See *Decretales*, *Decretum*.

Decretals are the answers of the popes to questions proposed to them on religious subjects. *Butler's Hor. Jur.* 105.

DECRETO. Span. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign, in relation to ecclesiastical matters. *Schmidt's Civ. Law*, 93, note.

DECRETUM. Lat. [from *decernere*, to decree.] In the civil law. A species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause, (*quod imperator cognoscens decrevit*). *Inst.* 1. 2. 6. *Cooper's Notes*, in loc. *Dig.* 1. 4. 1. 1. 1 *Mackeld. Civ. Law*, 41, § 50. For other senses, see *Calvin's Lex. Jurid.* *Brissonius*.

DECRETUM. Lat. In the canon law. An ecclesiastical law, in contradistinction to a secular law, (*lex*). 1 *Mackeld. Civ. Law*, 81, § 93, Kaufmann's note.

The title of the first of the two great divisions of the *Corpus Juris Canonici*; more commonly known as *Decretum Gratiani*, (q. v.)

DECRETUM GRATIANI. Lat. Gratian's decree, or *decretum*. A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benedictine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 *Bl. Com.* 82. 1 *Reeves' Hist. Eng. Law*, 67. 1 *Mackeld. Civ. Law*, 81, § 93, Kaufmann's note. *Butler's Hor. Jur.* 113.

DECRY. To cry down; to discredit. "The king may at any time decry, or cry down any coin of the kingdom, and make it no longer current." 1 *Bl. Com.* 278. 1 *Hale's P. C.* 197.

DECURIA. L. Lat. In Saxon law. A tithing or decennary, otherwise called *decenna*, *decania* and *decima*, (qq. v.) *Spelman*, vocc. *Decanus*, *Friborga*.

DECURLÆ. L. Lat. In old European law. Marks or incisions made on trees for the purpose of designating boundaries. *LL. Wisegoth.* lib. 8, tit. 6, l. 1. *Spelman*.

DECURIO. Lat. In the Roman law. A kind of provincial senator. The *decuriones* were members of a council or senate established in all the great towns in the Roman provinces, constituting a kind of municipal corporation, and having the whole administration of the internal affairs of the places in which they resided. 1 *Spence's*

Chancery, 54. *Cooper's Justin. Inst. Notes*, *439. *Dig.* 50. 2. *Cod.* 10. 31. *Nov.* 38. *Calv. Lex.*

DECURIONATUS. Lat. In the Roman law. The office of a decurio. *Calv. Lex.* *Phillimore on Domicil*, 3.

DEDEINS, Dedeinz, Dedeynz, Dedinz, Dedenz, Dedens, Dedaynes. L. Fr. Within; in. *Dedeins la vierge*; within the verge. *Artic. Sup. Chart.* c. 3.

Clos dedens mason, ou dedens parkes; shut up in a house, or in pounds. *Britt. c.* 27. *Dedens age*; within age. *Id. c.* 34. *Dedeynz age. Fet Assaver*, § 48.

DEDENTRE. L. Fr. Within; between. *Kelham*.

DEDI. Lat. [from *dare*, to give.] I have given. The operative and proper word of conveyance in ancient charters of feoffment, and deeds of gift and grant. *Co. Litt.* 9 a. 2 *Bl. Com.* 310, 316. *Bract. fol.* 34 b. *Fleta*, lib. 3, c. 14, § 5. The present *do* (I give) was also used, and may have been the more ancient form. *Bracton* employs this frequently in his illustrations. *Bract. fol.* 17, *et passim*. The future *dabo* (I will give) was used in the Anglo-Saxon grants. 1 *Spence's Chancery*, 44.

Dedi and its English equivalent were formerly held to imply a warranty of the title to the land or estate conveyed. *Co. Litt.* 384. 2 *Bl. Com.* 300. 4 *Co.* 81. 5 *Co.* 17. *Perkins*, c. 2. But the law on this point has, in England, been recently altered by statute. See *Give, Gift, Deed*.

DEDI ET CONCESSI. L. Lat. (I) have given and granted. The operative words of conveyance in ancient charters of feoffment, and deeds of gift and grant; the English "*given and granted*" being still the most proper, though not the essential words by which such conveyances were made. 2 *Bl. Com.* 53, 316, 317. 1 *Steph. Com.* 164, 177, 473, 474. *Co. Litt.* 301 b, 384. *Shep. Touch.* 232, and notes.

* * The clause of which *dedi et concessi* were the emphatic words, was that with which deeds or charters anciently commenced, the form being as follows:—*Sciant præsentes et futuri, quod ego, talis, dedi et concessi et hac præsenti chartâ meâ confirmavi tali, pro homagio et servitio suo, tantam terram cum pertinentiis in tali villa, &c.*: Know [all] men present and to come, that I, (such a one) have given and granted, and by this my present charter have confirmed to (such a one) for his homage and

service, so much land, with the appurtenances, in such a town, &c. *Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5. Nearly the same form is given by Littleton. *Litt.* sect. 372. 2 *Bl. Com.* Appendix, No. 1. Sometimes the infinitives *dedisse et concessisse* were used, the meaning in English being the same. In indentures, properly so called the third person, *dedit et concessit*, (has given and granted) was used instead of the first. See *Dedit et concessit*. *Dedi* and *concessi* were sometimes held to have the same effect in substance, and to enure to the same intent as *confirmavi*. *Litt.* sect. 531. *Co. Litt.* 301 b. The three words, however, were usually employed together. See *supra*. And see *Dedimus et concessimus*.

DEDICATION. Appropriation to a certain use or uses. Appropriation of private property to public uses; either by a formal or express act on the part of the owner, or by acts from which an appropriation may be legally presumed.* Appropriation of lands or easements for the uses of a public highway, street, square, landing, or other place for public use and enjoyment. *Cowen, J.* 20 *Wendell's R.* 119—137. *Crawford, J.* 2 *Wisconsin R.* 193.—The deliberate appropriation of land by its owner, for any general and public uses, reserving to himself no other rights than such as are perfectly compatible with the full exercise and enjoyment of the public uses to which he has devoted his property. *Verplanck, Senator*, 23 *Wendell's R.* 472. Approved by the court, (*Crawford J.*) 2 *Wisconsin R.* 153, 187.

No particular form is necessary to make a dedication. It may be made by parol and proved by parol. 12 *Georgia R.* 239. 19 *Barbour's R.* 428. 15 *Illinois R.* 236. But to render it effective it must be accepted. 2 *Selden's R.* 257. 2 *Douglas (Mich.) R.* 256. A dedication may be established from user alone. 19 *Barbour's R.* 179. As to presumptions of dedication, see 17 *Howard's R.* 426, 435. And see generally, 6 *Hill's (N. Y.) R.* 407. 14 *Barbour's R.* 511. 12 *Wheaton's R.* 582. 6 *Peters' R.* 431. 10 *Id.* 662. 12 *Illinois R.* 29. 2 *Wisconsin R.* 153, and cases cited *ibid.* 9 *Howard's R.* 10. 3 *Kent's Com.* 450—452, and notes. *United States Digest*, Dedication.

DEDICERE. L. Lat. [*L. Fr. dedire.*] In old pleading and practice. To deny. *Fleta*, lib. 2, c. 47, § 21. *Cro. Jac.* 343.

Aut dedit aut cognoscit; he either denies or acknowledges. *Bract.* fol. 214. *Si petens hoc dedicere non possit*; if the demandant cannot deny this. *Id.* fol. 320 b. See *Stat. Westm.* 2, c. 9. *Dedicta*; denied. *Fleta*, lib. 2, c. 63, § 12.

DEDICTUM. L. Lat. [from *dedicere*, to deny.] In old practice. Denied. *Quod non fuit dedictum per curiam*; which was not denied by the court. *Dyer*, 14.

DEDIMUS ET CONCESSIMUS. L. Lat. We have given and granted. The plural of *Dedi et concessi*, (q. v.)

Emphatic words in the commencement of Magna Charta. *Sciatis quod nos dedimus et concessimus archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, et omnibus de regno nostro, has libertates subscriptas.* Know ye, that we have given and granted to the archbishops, bishops, abbots, priors, earls, barons and all of our realm, these liberties underwritten. *Mag. Cart.* 9 *Hen.* III. pr.

DEDIMUS POTESTATEM. L. Lat. (We have given power.) In English practice. A writ of commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, &c. 3 *Bl. Com.* 447. 1 *Id.* 352. Cowell defines it to be "a writ whereby a commission is given to a private man for the speeding of some act appertaining to a judge;" and says the civilians call it *delegatio*. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, &c. *Reg. Orig. tabula.* 2 *Bl. Com.* 351.

In the United States, a commission to take testimony is sometimes termed a *dedimus potestatem*. 3 *Cranch's R.* 293. 4 *Wheaton's R.* 508. 3 *Jones' Law R.* 118.

DEDIMUS POTESTATEM DE AT-TORNATO RECIPIENDO. L. Lat. (We have given the power of receiving an attorney.) In old English practice. The name of a writ or commission from the crown, directed to the judges of a court, authorizing them to receive or admit the attorney of a party; or, in other words, to permit him to appear by attorney. *Reg. Orig.* 22, 123 b, 140 b, 151. These instruments were otherwise termed *letters patent*, and without them a party could not, before the statute of Westminster 2, (cap. 10,) appear in court by attorney. *Gilb. C. Pleas*, 32.

DEDIRE. L. Fr. To deny. *Britt. c. 15. Dedit, deditz; denied. L. Fr. Dict. Kelham.*

DEDISSE. Lat. To have given. *Dedisse intelligendus est etiam is qui permutavit, vel compensavit.* He is understood to have given, who has exchanged or compensated. *Dig. 50. 16. 76.*

DEDISSE ET CONCESSISSE. L. Lat. To have given and granted, or [that I] have given and granted. Operative words in ancient charters of feoffment and deeds of grant, the whole commencement running thus:—*Omnibus Christi fidelibus ad quos presentes littere indentate pervenerint, A. de B. salutem in Domino sempiternam. Sciatis me dedisse, concessisse, et hac presenti carta mea indentata confirmasse C. de D. talem terram, &c.* To all christian people [the faithful of Christ] to whom these presents indented shall come, A. of B. sends greeting in our Lord everlasting. Know ye me to have given [that I have given] granted, and by this, my present deed indented, confirmed to C. of D. such lands, &c. *Litt. sect. 372.* This seems to have been a more frequent construction than that with *quod* and *dedit*, in the first person preterite. 1 *Reeves' Hist.* 91. See *Dedit et concessi.*

DEDIT ET CONCESSIT. L. Lat. Hath given and granted. Operative words in ancient charters of feoffment and deeds of grant, where the conveyance was by indenture, the whole running thus: *Hæc indentura, facta inter R. de P. ex una parte, et V. de D. ex altera parte, testatur quod prædictus R. de P. dedit et concessit, et hac presenti carta indentata confirmavit præfato V. de D. talem terram, &c.* This indenture, made between R. of P. of the one part, and V. of D. of the other part, witnesseth, that the aforesaid R. of P. hath given and granted, and by this present deed indented hath confirmed to the aforesaid V. of D. such land, &c. *Litt. sect. 371.*

DEDITITIL. Lat. An inferior kind of freedmen (*libertinorum*) at one time recognized by the Roman law, being introduced by the *Lex Ælia Sentia*, but long disused in the time of Justinian, and expressly abolished by him. *Inst. 1. 5. 3. Id. 3. 8. 4. Cod. 7. 5. Heinecc. Elem. Jur. Civ. lib. 1, tit. 5, § 109. Calv. Lex. Jurid.*

DEDUC. L. Fr. Brought; alleged; determined. *Kelham.*

DEDUCERE. Lat. In old English law. To bring. *Deducere rem in judici-*

um; to bring a thing into court; to make it the subject of judicial investigation. Bract. fol. 283 b, 376, 431. This expression is taken from the civil law. *Calv. Lex. Oportet quod certa res deducatur in stipulationem; it is necessary that a certain thing should be made the subject of stipulation. Fleta, lib. 2, c. 60, § 24.*

To deduct. *Deducto ære alieno; deducting debts. Fleta, lib. 2, c. 57, § 6.*

DEDURE, Deduire. L. Fr. [from Lat. *deducere*, q. v.] To bring. *Dedust, deduxit; brought. Kelham. Deduces; brought. Britt. fol. 2 b.*

DE'E. L. Fr. To be. *Kelham.*

DEED. Called by Lord Brougham, "a word of flexible import;" sometimes meaning a fact or act; sometimes an instrument; and sometimes (in Scotch law,) a feudal delinquency, and an act of service. 3 *Bell's Appeal Cases*, 123.

DEED. [L. Lat. *factum, charta; L. Fr. fait.*] A writing sealed and delivered by the parties. 2 *Bl. Com.* 295. 1 *Steph. Com.* 446.—A writing or instrument written on paper or parchment, sealed and delivered, to prove and testify the agreement of the party whose deed it is, to the things contained in the deed. *Termes de la Ley. Shep. Touch.* 50.—An instrument on parchment or paper comprehending a contract or bargain between party and party, and consisting of three things; writing, sealing and delivery. *Co. Litt.* 171 b. *Blount. Wharton's Lex.*—A writing [on parchment or paper and under seal,] containing a conveyance, bargain, contract, covenants, or matter of agreement between two or more. *Shep. Touch.* 50. *Whishaw.*—An instrument in writing upon paper or parchment, between parties able to contract, and duly sealed and delivered. 4 *Kent's Com.* 452. See 2 *Cushing's R.* 497. 35 *Maine R.* 260. Anciently called a charter, (*charta*, or *carta*, q. v.) and termed a deed, *καὶ ἐφ' ὧν*, because it is the most solemn and authentic act that a man can possibly perform with relation to the disposal of his property. 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. See *United States Digest*, Deed. See *Factum, Fait, Scriptum, Writing.*

A deed is said to consist of three principal points, (without which it is no perfect deed to bind the parties,) namely, writing, sealing and delivery. *Termes de la Ley.* Of these, *sealing* constitutes the principal distinction between a deed and any other

contract. *Smith on Contracts*, 6, 7. *Shep. Touch.* (by Preston,) 56. *Perkins*, ch. 2, a. 130, D. Hence the rule that every agreement put in writing, *sealed*, and delivered becomes a deed. *Shep. Touch. ub. sup.* See 35 *Maine R.* 260. Hence, also, in pleading, a bond is denominated a deed. The term, however, is usually confined in its application to conveyances of *real estate*, or of some *interest* therein, such as feoffments, gifts, grants, bargains and sales, leases, releases and confirmations, &c. *Shep. Touch.* 51. 1 *Steph. Com.* 446, 466. Other instruments under seal are properly only *quasi* deeds. *Shep. Touch.* (by Preston,) *ub. sup.* A mortgage is properly a deed, although in practice it is considered a distinct species of conveyance. See 4 *Howard's R.* 37. Whether it is essential that a deed be *signed* as well as *sealed*, seems to be still a question in English law. According to Sir William Blackstone, signing seems to be now as necessary as sealing. 2 *Bl. Com.* 305, 306. *Manassfield*, C. J. 4 *Taunt.* 123. But signing is not one of the necessary incidents to a deed enumerated by Lord Coke, and Mr. Preston and other modern writers hold it clear that no signature is necessary. *Co. Litt.* 35 b. *Shep. Touch.* (by Preston,) 56. *Sugden on Powers*, 304. See 2 *Chitty's Bl. Com.* 305, 306, notes. The question recently arose in England but was not determined. 2 *Q. B.* 580. *Smith on Contracts*, 5, note. Mr. Smith observes that "it is probable that the signature of deeds will be ultimately held requisite, whenever their subject matter falls within statutes which expressly require it; but that in other cases sealing and delivery are alone essential." *Id. ibid.* In American law, it appears to be the prevailing doctrine that a deed must be *signed* as well as *sealed*. 4 *Kent's Com.* 450, *et seq.* 2 *Hilliard's Real Prop.* 279. In New-York, every grant in fee or of a freehold estate is required to be subscribed and *sealed* by the grantor or his lawful agent. 1 *Rev. St.* [738,] 731, § 137.

DEED INDENTED, or INDENTURE.

[*L. Lat. carta indentata*, or *indentura*; *L. Fr. fait endent.*] In conveyancing. A deed executed or purporting to be executed in *parts*, between two or more parties, and distinguished by having the edge of the paper or parchment on which it is written, *indented* or *cut* at the top in a particular manner. This was formerly done at the

top or side, in a line resembling the teeth (*dentes*) of a saw; a formality derived from the ancient practice of dividing chirographs, (or deeds in parts); but the cutting is now made either in a waving line, or more commonly by notching or scalloping the paper at the edge. 2 *Bl. Com.* 295, 296. *Litt. sect.* 370. *Smith on Contracts*, 12. This formality of *indenting* is, however, very frequently omitted, although the term *indenture* itself is retained in daily use. See *Indenture*.

DEED POLL. [*L. Lat. charta de una parte, factum simplex*; *L. Fr. fait poll.*] In conveyancing. A deed of one part, or executed by one party only, (instead of between parties, and in two or more parts) and distinguished from an indenture by having the edge of the parchment or paper on which it is written, *cut even* (or *polled*, as it was anciently termed,) that is, in a straight line, or plain, without being indented. *Litt. sect.* 370. *Co. Litt.* 229 a. *Shep. Touch.* 50. This distinction, however, though once peculiar and essential, has in modern times become of comparative insignificance, in consequence of the disuse of the formality of *indenting* the other description of deeds. See *Deed indented*.

A deed poll properly is made in the first person, and commences with that formula of address to all mankind so common in ancient written instruments: "Know all men, &c., that I, &c., have given," &c. The forms given in Bracton, Britton and Fleta, as examples of charters (as deeds were once called) are of this description. *Sciant presentes et futuri, quod ego, &c. Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5. *Sachent a tous ceuz, &c., que jeo, &c. Britt.* c. 39. But a deed poll might be made in the third person. *Shep. Touch.* 51. And on the other hand an indenture might be made in the first. *Litt. sect.* 372. In some of the United States, the ordinary mode of conveyance is by deed poll.

A *deed poll* is considered in England as a deed made between the party or parties who executed it on the one side, and all the world on the other, or rather as a declaration, addressed to all mankind, of what the party executing it has done, so that any person may take a right of action on a covenant contained in a deed poll. But an *indenture* is made only between the persons named as parties to it, so that an indenture between A., B. and C. containing a covenant by A. with D., would not

[formerly] give a right of action to D. So, a stranger to an indenture could not take a release under it, or an estate unless by way of remainder or through the statute of uses. Now, a stranger may take immediately under an indenture, and a deed may have the effect of an indenture without being actually indented. 1 *Spence's Chancery*, 160.

A deed poll is held to be the deed of the party making it, and concludes him only; but an indenture is the deed of both parties, and concludes both. *Finch's Law*, b. 2, c. 2, p. 109. 2 *Hill's* (S. C.) R. 439. And see 2 *Hilliard's Real Prop.* 265, *et seq.*

DEEDS TO LEAD AND DECLARE USES. In old conveyancing. A species of deed incident to the conveyances by fine and recovery, by which the latter were directed to operate to certain particular uses. If these deeds were made previous to the fine or recovery, they were called deeds to *lead* the uses; if subsequent, deeds to *declare* them. 2 *Bl. Com.* 363. 1 *Steph. Com.* 529. *See on Abstracts*, 302.

DEEMSTER, Demster. [from Sax. *de-ma*, a judge, or *dom*, judgment.] A kind of judges, [two judges, according to Spelman,] in the Isle of Man, who decided all controversies without process, writings or any charge. *Cowell. Blount. Spelman.* This must not be confounded with the *dempster* of the old Scotch courts. *See Dempster.*

DEFAILLE. L. Fr. Deficiency. *Kelham.*

DEFAIRE, Defere. L. Fr. To undo; to reverse or set aside; to defeat; [Lat. *infectum reddere.*] *Kelham. L. Fr. Dict.*

DEFALCATIO. L. Lat. [from *de*, off, and *falcare*, to cut.] In old English law. Deduction; abatement. *Fleta*, lib. 2, c. 57, § 11. Literally, a cutting off.

DEFALCATION. [from *defalcatio*, q. v.] Deduction; reduction; abatement.

DEFALKER. L. Fr. To mow. *Dyer*, 70 b, (Fr. ed.)

DEFALTA. L. Lat. In old English practice. Default. *Bract.* lib. 5, tr. 3. *De defaultis*; fol. 364 b. *Procedatur contra ipsum ad defaultam*; proceedings shall be had against him to default. *Id.* fol. 330. *Compensari debeat defaulta cum defaulta*; default ought to be set off against default. *Id. ibid.* *Capiatur assisa per defaultam*; the assise shall be taken by default. *Id.*

fol. 255. *Stat. Marlbr.* c. 13. *Defaltam facere*; to make default. *Bract.* fol. 360 b, 363, 386 b. *Defaltam sanare*; to cure a default. *Id.* fol. 299 b, 367 b, 386 b.

DEFAMATION. [L. Lat. *defamatio, diffamatio*; from *de*, from, and *fama*, reputation.] The taking from one's reputation. The offence of injuring a person's character, fame or reputation, either by writing or by words. Written defamation is otherwise termed libel, and oral defamation, *slander*. *Cooke's Law of Defamation*, 1. *See Libel, Slander.*

DEFAMATOR. L. Lat. In old English law. A defamer. *Famosus defamator*; a libeller. 5 *Co.* 126.

DEFAMES. L. Fr. Infamous. *Britt.* c. 15.

DEFAUDER. L. Fr. To make default. *Kelham.*

DEFAULT. [L. Lat. *defalta, defectus*; L. Fr. *default, defeaute.*] In practice. Omission; neglect or failure. When a defendant in an action of law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to *make default*, and the judgment entered in the former case is technically called a judgment *by default*. 3 *Bl. Com.* 296, 396. 1 *Tidd's Pr.* 562. *See Defalta.*

Omission or non-performance of duty. *See 2 B. & A.* 516.

DEFAUTE, Defaut. L. Fr. Default. *Si il face defeaute, si soit il et ses plegges de suer, en la mercy*; if he make default, he and his pledges to prosecute shall be in mercy. *Britt.* c. 46.

DEFEASANCE, Defeazance. [L. Lat. *defeisantia*; from Fr. *defaire*, to undo or defeat.] In conveyancing. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be *defeated* or totally undone. 2 *Bl. Com.* 327. *Co. Litt.* 236, 237. In this manner, mortgages were, in former times, usually made; the mortgagor enfeoffing the mortgagee, and he at the same time executing a deed of defeasance, whereby the feoffment was rendered void, on repayment of the money borrowed at a certain day. 2 *Bl. Com.* 327. But this method was discountenanced and condemned as early as the time of Lord Chancellor Talbot. *Cas. temp. Talb.* 64. Defeasances are now of rare occurrence, the practice in modern times being to include in the same deed, [the mort-

gage] both the conveyance of the land to the alienee, and the conditions, if any, to which it is to be subject, and by which its effect may be defeated. 1 *Steph. Com.* 487. See 4 *Kent's Com.* 141, 142, and notes.

An instrument accompanying a bond, recognizance or judgment, containing a condition which, when performed, defeats or undoes it. 2 *Bl. Com.* 342. *Co. Litt.* 236, 237. A defeasance may also be endorsed on a bond, but the modern practice is to make the condition a part of the bond itself. See *Bond*.

DEFECT. [Lat. *defectus*.] The want or absence of some legal requisite; deficiency; imperfection; insufficiency. See *Defectus*.

DEFECTUS. Lat. [from *deficere*, to fail, to want, to be deficient.] In old practice. Defect, deficiency, imperfection; failure, default; want. *Defectus exitus*; default of issue. *Towns. Pl.* 23. *Propter defectum*; on account of deficiency; for want of certain qualifications. See *Propter defectum*.

DEFENCE. [L. Lat. *defensio*; L. Fr. *defence*, *defense*, from *defendre*, to deny.] In pleading. A denial, by the defendant in an action at law, of the truth or validity of the plaintiff's complaint. 3 *Bl. Com.* 296. A formula by which pleas were anciently, in almost all actions, required to be prefaced. It was of two kinds, full defence and half defence. The latter is still retained, and is in these words: "And the said defendant, by — his attorney, comes and defends the wrong (or force) and injury when, &c." *Steph. Pl.* (Am. ed. 1824,) ch. ii. sect. vii. rule v. 3 *Reeves' Hist. Eng. Law*, 428. *Termes de la Ley*. See *Defend*, *Full defence*, *Half defence*. The late pleading rules of the English courts have dispensed with this ancient formula, although they have not expressly prohibited its use.

DEFENCE, *Defense*. L. Fr. In old statutes. Prohibition; denial or refusal. *Enconter le defence et le commandement le roy*; against the prohibition and commandment of the king. *Stat. Westm.* 1, c. 1. See *Fence month*, *Defensum*.

A state of severalty, or of several or exclusive occupancy; a state of enclosure, [L. Lat. *defensum*.] See *Defensum*, *In defensio*.

DEFENCE, in modern practice, includes all the proceedings on the part of a de-

fendant, to embarrass, delay, or defeat a plaintiff's action.

In a stricter sense, defence is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law, or answer in equity. This is the meaning of the term in Scotch law. *Ersk. Inst.* b. 4, tit. 1, § 66.

DEFEND. [L. Fr. *defendre*; L. Lat. *defendere*.] In pleading. To deny. The words "comes and defends," (*venit et defendit*), have formed a part of a defendant's plea in an action at law from the earliest times, occurring in the forms used in the reign of King John. *Plac. Abbrev.* 27 *Leic. rot. ii. temp. Johan.* cited in *Steph. Pl. Appendix*, Note (79), Am. ed. 1824. See *Comes*, *Defence*. The effect of the expression "defends" is merely that the defendant denies the right of the plaintiff, or the force or wrong charged. *Steph. Pl.* ch. ii. sect. vii. rule v.

DEFEND. In modern practice. To oppose or resist a claim at law; to contest a suit.

DEFEND. [L. Fr. *defendre*, *defender*.] In old statutes and treatises. To prohibit or forbid. *LL. Edw. Conf.* c. 37. *Stat. Westm.* 1, c. 1, 5. *Stat. 5 Ric.* II. c. 7. "It is defended [forbidden] by law to restrain in the highway." *Co. Litt.* 161. *Cowell*.

Chaucer uses this word in the same sense:

Where can you say in any manner age,
That ever God defended marriage?
Procl. Wife of Bath.

To prohibit or exclude from use; to appropriate. See *Defendere*.

DEFEND is used in conveyancing in its popular sense; viz. in clauses of warranty at the conclusion of deeds,—"shall and will warrant, and forever defend." See *Defendemus*.

DEFENDANT, *Defendaunt*. L. Fr. and Eng. [L. Lat. *defendens*, and sometimes *defensor*; L. Fr. *defendour*, from *defendre*, to deny or defend.] In pleading and practice. The party against whom an action at law or in equity is brought; the party denying, (in the ancient sense,) opposing, resisting or contesting the action. See *Defend*. Called, in Scotch practice, the *defender*. Defendant, strictly, is the proper title of the party sued in a *personal* action; such party in a *real* action being termed the *tenant*. *Termes de la Ley*. In modern practice, however, this distinction is, in a great degree, disregarded. See *Tenant*.

DEFENDAUNT. L. Fr. In old practice. Defending; a defending party; the party against whom an action, whether civil or criminal, was instituted. The party accused in the old criminal proceeding by appeal, was called *defendaunt* and *defendour*. *Et quant al defense, se purra le defendaunt puis apres defendre en cestre manere*; and as to the defence, the defendant may afterwards defend himself in this manner. *Britt. c. 22.*

DEFENDEUS. L. Lat. [from *defendere*, q. v.] (We will defend.) In old conveyancing. An ordinary word anciently used in feoffments or gifts, by which the donor and his heirs were bound to *defend* the donee against any attempt to lay an incumbrance or servitude on the thing granted, other than what was contained in the deed or donation. *Bract. fol. 37 b. Termes de la Ley.* It was used in connection with *warrantizabimus*, (*Id. ibid.*) and the same two words in English are still retained in connection in the clause with which a warranty deed terminates;—"shall and will *warrant* and forever *defend*." *Defendemus*, however, had not itself the effect of a warranty. *Litt. sect. 733.*

DEFENDENDO. See *Se defendendo*.

DEFENDER. In Scotch law and practice. A defendant.

DEFENDER, *Defendre.* L. Fr. In old pleading. To deny. *Perez que cy est defend toutes felonies*; Peter, who is here, defends all felonies. *Britt. c. 22.*

To defend; to offer or conduct the defence in a suit; to appear for a defendant. *Sad. Des' & dist que, &c. Yearb. H. 4 Edw. III. 7. Shard. Defenda & challenge le count*; defends and challenges the count. *P. 5 Edw. III. 18.*

In old statutes. To prohibit or forbid. *Et le roy defende et commande*; and the king forbids and commands. *Stat. Westm. 1, c. 1. Cy defende le roy*; the king hereby commands. *Id. c. 5. Defendons*; we enjoin or command. *Britt. fol. 3.*

To prevent. *A defender le eve de surrounder*; to prevent the water from overflowing. *Dyer, 33, (Fr. ed.)*

To defend; to keep or protect. *Il le tua en defendant nostre pees*; he killed him in keeping our peace. *Britt. c. 24. Soy defendaunt*; in self defence. *Id. ibid.*

DEFENDERE. L. Lat. In old pleading. To defend or deny. *Petrus venit et defendit cartam, quod nunquam facta fuit*

per Petrum de Goldington; Peter comes and defends [denies] the charter, that it was never made by Peter de Goldington. *Placit. Abbrev. cited Steph. Pl. (Am. ed. 1824,) Appendix, Note (79).* *Venit et defendit omnem feloniam*; comes and defends all the felony. *Bract. fol. 138 b. Veniunt et defendunt vim et injuriam*; come and defend the force and injury. *Id. fol. 57 b. Si negaverit et crimen defenderit*; if he deny and defend the crime or accusation. *Id. fol. 137. Si dicat, defendo donum et chartam, tunc oportet tenentem probare utrumque*; if he say "I defend the gift and the charter," then the tenant must prove both. *Id. fol. 214 b.*

To defend, in the modern sense. *Defendere se per corpus suum*; to defend himself by his own body; to offer the duel or combat as a legal trial. *Bract. fol. 133 b. Se defendat per corpus, vel per patriam*; may defend himself by his body, or by the country. *Id. ibid. See Id. fol. 146, 151.*

In the following passage of *Fleta*, the word seems to be used in both senses: *Defendere se debet in primis sic, omnem feloniam defendit*; he ought to defend himself in the first place, thus; he defends all the felony. *Fleta, lib. 1, c. 21, § 3.*

DEFENDERE. L. Lat. In old statutes. To prohibit or forbid. *Hoc ne amodo sit omnino defendo*; I wholly forbid this from being done in future. *Chart. Hen. I. A. D. 1100.*

To prohibit from use; to appropriate to one's exclusive use; to fence in or enclose; to fence out or exclude others. *Nulla riparia de cætero defendatur nisi illa quæ fuerunt in defenso tempore regis Henrici, &c.*; no river shall be defended from henceforth, but such as were in defence in the time of King Henry, &c. *Magna Charta, 9 Hen. III. c. 16.* That is, no owner of the banks of rivers shall so appropriate or keep the rivers several to him, to defend or bar others either to have passage or fish there, &c. *3 Inst. 30. See Defensum.*

DEFENDIT VIM ET INJURIAM. L. Lat. (He) defends the force and injury. *Fleta, lib. 5, c. 39, § 1.*

DEFENDOUR. L. Fr. A defender or defendant; the party accused in an appeal. *Britt. c. 22.*

DEFENDRE, Defender. L. Fr. To defend or protect. *Garraunter, acquiter et defendre son tenaunt*; to warrant, acquit and defend his tenant. *Britt. c. 68. See*

Id. c. 75. *Et quant al* defense, *se purra le* defendaunt puis apres defendre *en ceste manere*; and as to the defence, the defendant may afterwards defend himself in this manner. *Britt.* c. 22. *Pursuer et defendre*; to prosecute and defend. *Id.* c. 21. See *Defender*.

DEFENSA. L. Lat. In old English law. A park or place fenced in for deer, and defended as a property, and peculiar for that use and service. *Cowell*.

DEFENSABLE. L. Fr. In old pleading. Expressive of defence; in form of defence. *Se defendent par motz defensables*; defend themselves by words of defence. *Britt.* c. 59.

DEFENSE, Defens. L. Fr. Defence. *Britt.* c. 22.

DEFENSIO, Defentio. L. Lat. In old English law. Defence. *Feoffatus habebit defensionem suam in manu sua*; the feoffee will have his own defence in his own hand. *Bract.* fol. 21 b. *Defensio contra sectam*; defence against the suit. *Id.* fol. 290 b. *Defensiones*; defences. *Id.* fol. 258 b.

In old statutes. Prohibition. *Statutum de defensione portandi arma*, &c.; the statute of prohibition of bearing arms, &c. (7 Edw. I.) *Cowell*. *Defensio ripariæ*; prohibition to use a river; exclusive appropriation to the use of the king. *Hale de Jur. Mar.* pars 1, c. 2.

DEFENSIVE ALLEGATION. In English ecclesiastical law. A species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defence. This entitles him, in his turn, to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 *Bl. Com.* 100. 3 *Steph. Com.* 720. *Hallifax, Anal.* b. 3, c. 11, num. 21.

DEFENSIVE WAR. In the law of nations. A war commenced or carried on in defence or for the protection of national rights.* A war may be *defensive* in its principles, though *offensive* in its operations. 1 *Kent's Com.* 50, note.

DEFENSO. See *Defensum, In defenso*.

DEFENSOR. Lat. [from *defendere*, q. v.] In the civil law. A defender; one who defends another in court. One who undertook the defence of another's cause, and assumed his responsibilities. *Qui alium defendit satisfacere cogitur; nemo enim alienæ litis idoneus defensor sine satisfactione in-*

telligitur. *Dig.* 3. 3. 46. 2. *Id.* 3. 3. 51. 1.

One who acted as the advocate of a defendant, especially in a criminal matter. *Calv. Lex.* This was a generic term, including *patronus, advocatus, procurator* and *cognitor*. *Asconius in Divin. in Cæcil.* 4.

One who was chosen to prosecute or defend a certain cause, (*ad certam causam agendam vel defendendam*). *Dig.* 50. 4. 18. 13.

A municipal magistrate, having certain judicial powers. See *Defensor civitatis*.

A guardian, (*tutor, vel curator*). *Calv. Lex. Jurid.*

In early European law. A protector or guardian. *LL. Longobard.* lib. 1, tit. 30, l. 13. *Spelman*.

In old English law. The party accused in an appeal; the defender or defendant. *Bract.* fol. 141 b.

The party warranting another's title in a real action; otherwise called *warrantus*. *Id.* fol. 257 b.

In the canon law. The protector or advocate of a church, (*defensor ecclesiæ*). *Spelman*. See *Advocatus*.

A provincial officer having charge of the patrimony of the church. *Spelman*.

An officer having charge of the temporalities of a parish church. Hence churchwarden, (*guardianus ecclesiæ*). *Id.*

DEFENSOR CIVITATIS. Lat. Defender or protector of a city or municipality. An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. *Schmidt's Civ. Law*, Introd. 16. *Cod.* 1. 55. 4. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offences. *Cod.* 1. 55. 1. *Nov.* 15, c. 3, § 2; c. 6, § 1. He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances. See *Nov.* 15, *per tot.*

DEFENSUM. L. Lat. In old English law. An enclosure, or any fenced ground. 2 *Mon. Angl.* 114. 3 *Id.* 306. *Inclusum et positum in defensum*; enclosed and put in defence or fence. *Bract.* fol. 228. *Rationabilis defensa*; reasonable defences. *Fleta*, lib. 4, c. 19, § 7.

A part of an open field, appropriated to a particular use, as for hay, which was hence said to be in *defenso*. *Cowell*.

A state of several occupancy or appropriation. *Magna Charta*, c. 16.

Defence, in the old sense of prohibition; a state of prohibition, or in which the use of a thing is prohibited by law. *Stat. Westm.* 2, c. 47. See *In defenso*.

DEFERE. L. Fr. To undo; to defeat; to set aside or reverse. *Kelham*.

DEFINIRE. Lat. [from *de*, and *finire*, from *finis*, a bound or limit.] In the civil law. To define; to explain a thing, (*quid res sit explicare*). *Calv. Lex. Jurid.*

To lay down a rule, (*pro regula aliquid statuere*). *Id. Dig.* 34, 7. 1, pr.

DEFINITIO. Lat. [from *definire*, q. v.] In the civil law. Definition; explanation; exposition; the explanation of a thing, including, as within a circumscribed line or limit, (*finis*,) everything pertaining to it.* *Calv. Lex. Jurid.*

The establishment or laying down of a general rule. *Id. Omnis definitio in jure civili periculosa est*. All definition in the civil law is hazardous. *Dig.* 50. 17. 202. This maxim, otherwise expressed, *Omnis definitio in lege periculosa*, is frequently cited as illustrative of the difficulties attending definition in its ordinary modern acceptation, viz. the explanation of the meaning of words. *Swinburne on Wills*, part 1, sect. 3. But according to Calvin, it is not so difficult to define a thing exactly, as it is rare to be able to lay down a rule of law in terms at once so comprehensive and precise as to be proof against criticism. *Neque tam est difficile rem aliquam in jure civili exacte definire, quam est rarum regulam ex legibus colligere quæ nulla in parte infirmari queat*. *Calv. ub. sup.* See *Swinburne, ub. sup. in notis*.

A general rule or canon of law. *Calv. Lex. Jurid.*

DEFINITION. See *Definitio*.

DEFINITIVE SENTENCE. [L. Lat. *diffinitiva sententia*.] The final judgment, decree or sentence of an ecclesiastical court; the sentence by which a principal cause is determined, as distinguished from an interlocutory sentence, which is on some incidental question arising from the principal cause. 3 *Bl. Com.* 101. *Hallifax, Anal.* b. 3, c. 9, num. 40. *Bract.* fol. 405 b.

DEFONTAINES. The oldest writer on the law of France. *Esprit des Loix*, liv. 28, c. 38. Pierre Desfontaines published, about the year 1253, a work on the French law of custom, comparing it with the Roman law. 1 *Mackeld. Civ. Law*, 70, § 85. This

work, which the author called his *Conseil*, contains in particular an account of the customs of the country of Vermandois. 1 *Robertson's Charles V.* Appendix, Note xxx. *Esprit des Loix, ub. sup.*

DEFORCE. [L. Lat. *deforciare*; L. Fr. *deforcer*.] In English law. To withhold wrongfully the possession of lands; to keep another wrongfully out of possession of a freehold.* 3 *Bl. Com.* 172. See *Deforcement*.

In Scotch law. To resist the execution of the law; to oppose by force a public officer in the execution of his duty. *Bell's Dict. voc. Deforcement*.

DEFORCEMENT. [L. Lat. *deforciammentum*.] In English law. A keeping out by force or wrong; a wrongful withholding of lands or tenements to which another has a right; a species of ouster, or privation of the freehold.* *Termes de la Ley, voc. Deforcer*. 3 *Bl. Com.* 172.

In its most extensive sense, this is *nomen generalissimum*, signifying the withholding of any lands or tenements to which another has a right, and includes as well an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, whereby he that has right to the freehold is kept out of possession. *Co. Litt.* 277 b. 3 *Bl. Com. ub. sup.* But, as contradistinguished from these injuries, it is only such a detainer of the freehold from him that has a right of property, but never had any possession under that right, as falls within none of them. *Id.* 172, 173. 3 *Steph. Com.* 483. 2 *Crabb's Real Prop.* 1064, 1065, § 2457. See *Ouster, Abatement, Disseisin, Intrusion*.

DEFORCEMENT. In Scotch law. The opposition or resistance made to messengers or other public officers, while they are actually engaged in the exercise of their offices. *Ersk. Inst.* b. 4, tit. 4, § 32. *Bell's Dict.* 2 *Brown's R.* 495.

DEFORCEOR. [L. Fr. *deforceour*; L. Lat. *deforciator, deforcians*.] In English law. One who deforces another, or keeps him out of his freehold. *Termes de la Ley*. See *Deforce, Deforcement*.

DEFORCER. L. Fr. To deforce. *Litt.* sect. 614.

DEFORCIANS, *Defortians*. L. Lat. [from *deforciare*, q. v.] In old English law. A deforciant. *Reg. Orig.* 171. *Reg. Jud.* 6. *Fleta*, lib. 5, c. 13, § 1.

DEFORCIANT. [L. Lat. *deforcians, defortians*.] In English law and practice.

One who deforces another; a deforceor, (q. v.)

The person against whom the fictitious action of fine was brought. 3 *Bl. Com.* 174. The defendant in the assise of darrein presentment. *Bract.* fol. 238, 239, 240.

DEFORCIARE, *Defortiare*, *Deforceare*. L. Lat. In old English practice. To deforce; to withhold lands or tenements from the right owner. *Bract.* fol. 238, *et seq.* *Fleta*, lib. 5, c. 11. Said by Lord Coke to be a word of art, which cannot be expressed by any other word. *Co. Litt.* 331 b.

Deforciat, *Deforceat*; he deforces. *Quod ei deforceat*; that he deforces him or her. *Reg. Orig.* 170. *Bract.* fol. 372 b. *Quam talis ei deforciat*; of which such a one deforces him. *Id.* fol. 328.

Deforciator; a deforcer. *Stat. Marlbr.* c. 7.

DEFORCIATIO. L. Lat. In old English law. A distress, distraint, or seizure of goods for satisfaction of a lawful debt. *Kennett's Par. Ant.* 293. *Cowell.*

DEFORE. L. Fr. To oppose or obstruct. *Kelham.*

DEFUER. L. Fr. To flee from; to run away; to elope. *Kelham.* *Defuiaunt*; running away. *Id.* *Defuont*; run away. *Id.* *Après ceo que el avera defuy son baron*; after she shall have eloped from her husband. *Britt.* c. 42.

DEFUNCT. [from Lat. *defunctus*, q. v.] Deceased; a deceased person. A common term in Scotch law.

DEFUNCTUS. Lat. In the civil law. Deceased; a deceased person. *Dig.* 40. 15. *Cod.* 7. 21. So called *quia vitâ defunctus est*. See *Dig.* 29. 1. 40, pr.

In old English law. Defunct; deceased; a deceased person; the deceased. *Si pueros habuerit defunctus*: if the deceased have had children. *Fleta*, lib. 2, c. 57, § 10. *Omnia catalla cedant defuncto*; all the chattels shall go to the deceased. *Id.* c. 62, § 11. And see *Mag. Chart.* 9 Hen. III. c. 18. *Id.* *Johan.* c. 26.

DEFUSTARE. L. Lat. In old records. To beat with a club or stick; (*fustigare*). *Spelman.*

DEGAGER. L. Fr. To give security; to deliver on gage or security. L. Fr. *Dict.* *Kelham.*

DEGASTER. L. Fr. To waste. *Degast*, *degaste*, *degata*; wasted, destroyed. L. Fr. *Dict.* *Kelham.*

DEGAYNE. L. Fr. Untilled. *Barringt. Obs. Stat.* 58, note [g].

DEGRADATION. [Lat. *degradatio*, from *de* priv. and *gradus*, rank.] In English law. Deprivation of dignity or rank; the depriving a peer of his nobility, or a clergyman of his holy orders and ecclesiastical distinctions. 1 *Bl. Com.* 402. *Selden's Tit. of Honor*, 787. *Staundf. PL Cor.* 130, 138. Anciently, the peculiar punishment of a clerk (*clericus*), convicted of a crime. *Bract.* fol. 123 b. Called, also, *disgrading*. *Cowell.* *Blount.*

DEGREE, *Degre*. L. Fr. and Eng. [Lat. *gradus*; Gr. *βαθμος*.] A step. A term employed in the law of descent to denote the distance from one person to another in the lines of consanguinity, the nearest relatives being always separated from each other by one degree.* *Gradus est distantia cognatorum.* *Heinecc. El. Jur. Civ.* lib. 1, tit. 10, § 153. A person added to a person in the line of consanguinity makes a degree. Take the son and add the father, it is one degree. Take away one of the number of persons, and you have the number of degrees. If there be four persons, it is the third degree, if five, the fourth, &c. *Co. Litt.* 23 b. See *Gradus*.

Le primer degree avalaunt; the first degree descending. *Britt.* c. 119. *Les autres degrees plus hautz*; the other higher degrees. *Id.* *ibid.* *De gree en degree*; degree by degree, step by step, from one degree or step to another. *Id.* *per tot.* *Degree pleyn*; a full degree; a degree occupied by a person. *Id.* *Degre voyde*; a vacant or empty degree, (*gradus vacuus*.) *Id.* *Kelham* translates this last expression, "a void space;" but it obviously means a degree unoccupied by a person, or made vacant by death. The figures or diagrams used in the old books to represent succession, descent or relationship by lines right or direct, and transverse, collateral, or oblique, are frequently in the form of a series of steps upward and downward, supposed to be filled or occupied by persons. See *Gradus*, *Linea*. The steps of a platform were called degrees. "The Lord Treasurer sat as High Steward of England, under the cloth of state, on a bench between two posts, three degrees high." 1 *How. St. Trials*, 518.

DEGUERPYS. L. Fr. Abandoned. *Kelham.*

DEHORS. L. Fr. Out of; without; beyond; foreign to; unconnected with. *Dehors* the record; foreign to the record. 2 *Bl. Com.* 387. See *Hors*.

DEL L. Fr. [Lat. *digitus*.] A finger; the finger. *LL. Gul. Cong.* l. 13.

DEI GRATIA. Lat. By the grace of God. An expression used in the titles of sovereigns, and considered as one of the prerogatives of royalty, (*propria jura majestatis*), although anciently a part of the titles of inferior officers and magistrates, ecclesiastical and civil. *Spelman*.

DEI JUDICIUM. L. Lat. The judgment of God. The Saxon trial by ordeal. See *Judicium Dei*.

DEINS, *Deinz*, *Deynz*, *Dans*, *Dedens*. L. Fr. Within. *Deins age*; within age; under age. *Litt.* sect. 406. *Deins le quater meres*; within the four seas. *Stat. Westm.* l. c. 44. *Stat. Modus Lev. Fines*.

DEIT. L. Fr. Owes; ought; owing. *Kelham*. *Deites*; debts. *Id.* See *Doit*.

DEIVER. L. Fr. To owe; ought. *Kelham*.

DEJECTER. L. Fr. [from Lat. *dejectere*, q. v.] To cast off, or out; to throw down. *L. Fr. Dict.* *Kelham*.

DEJICERE. Lat. In the civil law. To eject or cast out; to dispossess or deprive of possession. *Dig.* 43. 16. 1. *Inst.* 4. 15. 6. This term is used by Bracton indifferently with the more modern *ejicere*. *Bract.* fol. 166, 166 b. See *Fleta*, lib. 4, c. 2.

Dejectus; ejected. *Dig. ub. sup. Bract. ub. sup.*

DEL BIEN ESTRE. L. Fr. [L. Lat. *de bene esse*.] In old English practice. Of well being; of form. *Britt.* c. 39. See *De bene esse*.

DEL CONSAIL. L. Fr. Of counsel. *Yearb.* P. 11 Hen. VI. 1.

DEL CREDERE. Ital. (Of belief, trust or warranty.) In mercantile law. A term used to denote the agreement by which an agent or factor, in consideration of an additional premium or commission, when he sells goods on credit, engages to insure, warrant or guarantee to his principal the solvency of the purchaser. *Paley on Agency*, 41. *Russell on Factors*, 2. The additional commission thus given is called a *del credere* commission. 6 *Bro. P. C.* 287. 2 *Steph. Com.* 128. A *del credere* engagement is now settled to be that of a surety or guarantor, the factor becoming liable only in case of the default of the purchaser. 2 *Kent's Com.* 625, and note. *Story on Agency*, § 33, and note.

DEL TEMPS DOUNT MEMORY NE

VOL. I.

COURT. L. Fr. From time whereof memory runneth not. *Britt.* c. 86.

DELAI. L. Fr. Delay. *Artic. sup. Chart.*

DELAISSEMENT. Fr. In French marine law. Abandonment. *Emerig. Tr. des Ass.* ch. 17.

DELATE. In Scotch law. To accuse. Delated, (O. Sc. *delaitit*) accused. *Delatit off arte and parte*; accused of being accessory to. 1 *Pitc. Crim. Trials*, part 1, p. 1. 3 *How. St. Trials*, 425, 440.

DELATIO. Lat. [from *deferre*, to accuse or denounce.] In the civil law. An accusation or information. *Calvin's Lex. Jurid.*

DELATOR. Lat. [from *deferre*, to accuse, or denounce.] In the civil law. An informer; a denouncer; an accuser. *Cod.* 10. 11. *Calv. Lex. Brissonius*.

DELATURA. L. Lat. In old English law. An accusation; the reward of an informer. *LL. Hen.* I. c. 46. *LL. Inq.* c. 20, *apud Brompton*. *Whishaw*.

DELECTUS PERSONÆ. Lat. The choice of a person. A term applied, in the law of partnership, to the right of a partner to choose or determine what persons shall be introduced into the firm as new partners. *Story on Partn.* §§ 5, 195.

In Scotch law. The presumed choice of a person, which the grantor of certain deeds is supposed to have for the person in whose favor the right is granted. *Bell's Dict.*

DELEGARE. Lat. In old English law. To assign to another; to transfer a duty or power; to appoint a substitute; to depute or commission; to delegate.* *Bract.* fol. 108 b.

In the civil law. To substitute another in one's place as a debtor. *Delegare est vice suū alium reum dare creditori vel cui jusserit*. To delegate is to give to a creditor, or to him whom the creditor appoints, another person in one's place as a debtor. *Dig.* 46. 2. 11. See *Delegation*.

DELEGATION. [Lat. *delegatio*, from *delegare*, q. v.] In the civil law. The changing or substitution of one debtor for another, by which the obligation which lay on the first debtor is discharged; a species of novation, (q. v.) *Ersk. Inst.* b. 3, tit. 4, § 22.—Delegation is a kind of novation, by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor, or to the person ap-

pointed by him. *Poth. Oblig.* part 3, ch. 2, art. 6, § 1.—Delegation is novation effected by the intervention of another person whom the debtor, in order to be liberated from his creditor, gives to such creditor, or to him whom the creditor appoints; and such person so given becomes obliged to the creditor in the place of the original debtor. *Burge on Suretyship*, 173. See *Civ. Code of Louis.* art. 2188.

DELEGATUS, *Delegata*. Lat. [from *delegare*, q. v.] Delegated, deputed, commissioned; appointed to act for another as delegate, deputy, or agent. See *infra*.

Transferred or assigned, as a power or authority. See *infra*.

Delegatus non potest delegare. A delegate cannot delegate; an agent cannot delegate his functions to a sub-agent without the knowledge or consent of the principal: the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized so to do. *Broom's Max.* 385, [666,] and notes. 9 *Co.* 77. 2 *Steph. Com.* 119, 120. 2 *Kent's Com.* 633. 3 *Jones' Law R.* 45. The civil law maxim was *Constat procuratorem alium procuratorem facere non posse.* *Dig.* 19. 1. 4. 5. *Story on Agency*, § 18. See *Vicarius*.

The term *delegatus* is applied by Bracton to the ancient justices in eyre, as possessing a delegated authority or jurisdiction from the king; and he remarks *quod nullus justitiarius à domino rege sic delegatus poterit aliquem sibi subdelegare.* *Bract.* fol. 108 b. See *Cod.* 3. 1. 5. This is probably the earliest application of the maxim in English law. See *infra*.

Delegatus debitor est odiosus in lege. A delegated debtor is odious in law. 3 *Bulstr.* 148.

Delegata potestas non potest delegari. A delegated power cannot be delegated [or re-delegated]. 2 *Inst.* 597. *Branch's Princ. Broom's Max.* 384, [665]. *Story on Agency*, § 13. See 11 *Howard's R.* 223.

Bracton divides jurisdiction, or the power of judging, (*potestas judicandi*), into ordinary, (*ordinaria*), as that of the king, and delegated, (*delegata*), as that of a justice appointed by him, (*sicut justitiarius ab eo constitutus*); and observes that a justice cannot substitute another justice in his place, (*et non alius à justitiario substituendus, quia justitiarius justitiarium substituere non potest*). *Bract.* fol. 333 b. See *Fleta*, lib. 2, c. 62, § 1.

DELESTAGE. Fr. In French marine law. A discharging of ballast (*lest*), from a vessel. *Ord. Mar.* liv. 1, tit. 1, art. 4.

DELETE. Sc. [from Lat. *delere*, to strike out.] In Scotch law. To erase; to strike out. 1 *How. St. Trials*, 1381.

DELIBERARE. Lat. In the civil law. To deliberate; to consult; to consider or think upon, *Deliberandi jus*; the right, privilege or benefit of deliberating. A competent time allowed an heir to deliberate whether he would accept or enter upon an inheritance. *Inst.* 2. 19. 5. *Hallifax, Anal.* b. 2, c. 6, num. 55. *Brak. Inst.* b. 3, tit. 8, § 54.

DELIBERARE. L. Lat. In old English law. To deliver. *Deliberatur*; is delivered. *Deliberabitur*; shall be delivered. *Bract.* fol. 89 b. *Deliberatum, deliberatus, deliberata*; delivered. *Id.* fol. 76, 154, 157 b. *Deliberari facias*; you shall cause to be delivered. *Fleta*, lib. 2, c. 64, § 21.

DELIBERATIO. L. Lat. [from *deliberare*, q. v.] In old English law. Delivery. See *Liberatio*.

Acquittal or discharge. *Bract.* fol. 143 b.

DELICT. In Scotch law. A species of crime. Delicts are commonly understood of slighter offences which do not affect the public peace so immediately; as petty riots, &c. *Ersk. Inst.* b. 4, tit. 4. § 2. It appears to answer nearly to the English term *misdemeanour*, and is closely formed from the Lat. *delictum*, (q. v.)

DELICTA. [pl. of *Delictum*, q. v.] Crimes; offences. *Delicta puniuntur juxta mores loci commissi delicti, et non loci ubi de crimine cognoscitur*; crimes are punished according to the customs of the place where they are committed, and not of the place where they are tried. *Bartholus*, cited in *Henry on Foreign Law*, 47. 1 *Kent's Com.* 38, note.

DELICTO. See *Delictum*, *Ex delicto*.

DELICTUM. Lat. [Fr. *delit*, Span. *delito*; from *delinquere*, to offend or transgress.] A crime or offence; a violation of law, either natural or positive. *Liber homo non amercietur pro parvo delicto, nisi secundum modum ipsius delicti, et pro magno delicto secundum magnitudinem delicti*; a freeman shall not be amerced for a small offence, unless according to the measure of that offence, and for a great offence according to the greatness of the offence. *Magna Charta*, 9 Hen. III. c. 14. *Id. Johan.* c. 20. *Excusat aut extenuat delictum in capitalibus quod non operatur idem*

in *civilibus*. That excuses or extenuates an offence in capital cases, which does not operate the same in civil cases. *Bacon's Max.* 36, regula 7. "The offence was deposited with the voyage, and the *delictum* ended with the termination of the cruise." 1 *Kent's Com.* 123. 7 *Wheaton's R.* 283. "The *delictum* is completely done away when the blockade ceases." 1 *Kent's Com.* 152. 6 *Rob. Adm. R.* 387.

A tort or wrong, as distinguished from a contract; a private offence, as distinguished from a crime. The word *delictum* was extensively used in this sense in the civil law, and as a synonyme of *maleficium*, (malfeasance). *Inst.* 4. tit. & pr. *Id.* 3. 14. 2. From this source it appears to have been introduced into the law of England, through Bracton. *Ex maleficio vel delicto procedunt injuriæ et transgressiones*; from malfeasance or tort arise injuries and trespasses. *Bract.* fol. 101. *In iis delictis sive maleficiis obligatur ille qui delinquit ei contra quem delinquitur*; in those torts or malfeasances, he who commits the offence is bound to him against whom it is committed, [that is, to make satisfaction]. *Id.* fol. 101 b. *Ex delicto* (q. v.) is still a common term in the law of actions.

Guilt, criminality; fault or blame. *In pari delicto potior est conditio defendentis*. In a case of equal guilt, the condition of the defendant is the better one; where both the parties to a transaction are equally guilty or equally to blame, and one of them institutes legal proceedings against the other, the party proceeded against is in the better position, or has the advantage.* *Lord Mansfield, Coup.* 199, 200.

Delictum, considered with reference to its derivation, (from *delinquere*, q. v.) properly signifies an omission of duty, or neglect to comply with the requisition of the law, (*quid prætermisum*,) rather than a positive act in violation of it; but the latter has long been the received meaning.

DELINQUERE. Lat. [from *de*, and *linquere*, to leave.] To omit a duty; to neglect or fail to perform a required act. *Calv. Lex. Jurid.* Hence the English *delinquent*.

To offend or transgress. Hence *delictum*, (q. v.) See *Debet quis juri*, &c.

DELITO. Span. [from *delictum*, q. v.] In Spanish law. Crime; a crime, offence or delict. *White's New Recop.* b. 2, tit. 19, c. 1, § 1.

DELIVERANCE. In Scotch law. The

verdict of a jury. "The assyis, be thair delivuerance pronouncit be the mouth of the said," &c. 1 *Pitt. Crim. Trials*, part 1, p. 141. Still retained in the oath administered to jurors in criminal cases.

DELIVERER. L. Fr. To deliver. *Britt.* fol. 2 b.

DELIVERY. [Lat. *traditio*; L. Lat. *deliberatio*.] In conveyancing. One of the essential requisites to the validity of a deed. 2 *Bl. Com.* 306, 307. This may be either absolute, that is, to the party or grantee himself, or to a third person, to hold till some conditions be performed on the part of the grantee, in which case, it is not delivered as a deed, but as an *escrow*; that is, as a scrawl or writing which is not to take effect as a deed till the conditions be performed, and then it is a deed to all intents and purposes. *Id. ibid.* 1 *Steph. Com.* 459, and note. 4 *Kent's Com.* 454. *Smith on Contracts*, 7. 2 *Hilliard's Real Prop.* 282, 287. Delivery is the most essential act to give a deed validity. 26 *Mississippi R.* 275. 3 *Maryland R.* 67. It may be by words or acts alone, or by both together. 19 *Penn. St. R.* 194. A deed speaks from the time of its delivery, not from its date. 19 *Howard's R.* 73. *Curtis, J. Id.* 75, 76, citing 5 *Co.* 1. See *Livery, Sealed and delivered, Traditio, Escrow*.

DELIVERY. In the contract of sale. The act by which the seller of a thing transfers it to the hands or possession of the buyer or his agent, or places it within his control or power, or suffers him to have the enjoyment of it.* Actual or real delivery is the manual transfer of the commodity sold to the vendee. Constructive or symbolical delivery is the transfer of some article which is a symbol or evidence of ownership; such as the delivery of the key of a warehouse containing the goods sold, or of the bill of lading of goods at sea, or of the bill of sale of a vessel at sea.* *Story on Sales*, §§ 304, 311. 2 *Kent's Com.* 496—505. *Pothier, Contr. of Sale*, part 5, ch. 1, sect. 1. See 19 *New-Hampshire R.* 419. A permission given by the seller to the buyer, or to some one sent by him, to carry away the things sold, or to exercise acts of ownership over them, amounts to a delivery. *Poth. ub. sup.* To constitute a delivery and acceptance of goods sold, something more than mere words is necessary, there must be some act of the parties. 1 *Comstock's R.* 261. The case of cumbrous articles is not an exception to this rule. *Id. ibid.*

DEMAIN, Demaine, Demayne, Demaygne, Demeyne, Demeigne, Demesne. L. Fr. and Eng. [L. Lat. *demanium, domanium, dominicum*.] In old English law. A term used to denote a lord's chief manor place, with the lands thereto belonging, which he and his ancestors had, from time out of mind, kept in their own hands or manual occupation. *Termes de la Ley. Blount*. Derived, accordingly, by Lord Coke, from the Fr. *de, of, and main, hand*, i. e. manured [mainoured] or received by the hand. Hence *manual* occupation, possession or receipt. *Co. Litt.* 17 a. This derivation, however, is not approved by Spelman, who rejects also the word *demesne* and its etymology, and considers *demain* as derived from the Lat. *dominium*. *Spelman*, voc. *Dominicum*. See *Demesne, Dominicum*.

DEMAND. [L. Fr. *demande, demaunde*; L. Lat. *demanda, demandum*; Lat. *petitio, postulatio, postulatum*.] A calling for a thing due or claimed to be due. *Jacob*.—A claim. *Co. Litt.* 291 b.—A thing or amount claimed to be due.

Demand, according to Lord Coke, is one of the most comprehensive terms in the law. *Co. Litt.* 291 b. Beardsley, J. 1 *Denio's R.* 257, 261. See *Demandum*. It is of much broader import than *debt*, and embraces rights of action belonging to the debtor, beyond those which may appropriately be called debts. Nelson, C. J. 2 *Hill's (N. Y.) R.* 220, 223. A release of all manner of demands is the best release that a man can have, and shall enure most to his advantage. *Litt. sect.* 508. *Termes de la Ley*. See 8 *Co.* 153; *Altham's case*. But a release of all demands will not release a rent before it is due. 2 *Show.* 90.

To **DEMAND**. In practice. To summon; to call in court. "Although solemnly *demand*ed, comes not, but makes default."

DEMANDA. L. Lat. In old English law. A demand. *Bract.* fol. 17, 35. *Fleta*, lib. 2, c. 39, § 1. *Si quis recuperaverit demandam suam*; if one shall recover his demand. *Stat. Westm.* 2, c. 44. See 8 *Co.* 153. *Demandas. Fleta, ub. sup.*

DEMANDA. Span. In Spanish law. The petition of a plaintiff, setting forth his demand. *Las Partidas*, part 3, tit. 10, l. 3.

DEMANDANT. [L. Fr. *demaundaunt*; L. Lat. *petens*.] In practice. The party

suing in a real action; the same as plaintiff (*querens*) in a personal action. *Litt. sect.* 195. He who is *actor* in a real action; so called, because he *demand*s (*petit*) lands, &c. *Co. Litt.* 127 b. See *Petens, Peto*.

DEMANDARE. L. Lat. [L. Fr. *demand*er, q. v.] In old English practice. To demand. *Towne. Pl.* 63. See *Demand*a.

To order or award; to direct a sentence to be carried into effect. *Judicium executioni demandare*; to order a judgment to be carried into execution; to enforce by execution. *Bract.* fol. 107, 175, 205 b, 303 b. *Latā sententiā et executione demandata*; sentence being passed and execution ordered. *Id.* fol. 108 b. The word, in this sense, is derived from the Lat. *mandare*.

To give in charge, as to a jury. *Demandetur* appears to have this sense in the following passage in the Statute of Marbridge, c. 5: *Et hoc coram justitiariis itinerantibus in suis itineribus, cum opus fuerit, demandetur*. Lord Coke translates it "shall be inquired."

DEMANDER. L. Fr. In old English practice. To demand. *Nous demandons jugement, et priomus nous damages*; we demand judgment and pray our damages. *Yearb. M.* 5 Edw. III. 109.

To ask or inquire. *Montague demand' l' advise del court. Dyer*, 31 b, (Fr. ed.) *Marvyn demande cest question. Id.* 35.

To call a party in court. *Hull pria q'les def' soient d'ds. T. 7 Hen. VI.* 5.

DEMANDUM. L. Lat. In old English law. A demand. This, says Lord Coke, "is a word of art, and, in the understanding of the common law, is of so large an extent as no other one word in the law is, unless it be *clameum*." *Co. Litt.* 291 b. See *Demand*.

DEMEMBRATION. In Scotch law. The crime of cutting off a member. *Ersk. Inst.* b. 4, tit. 4, § 50. *Bell's Dict.*

DEMENS. Lat. [from *de, priv.* and *mens, mind*.] One who is deprived of his mental faculties, or who has lost his mind, (*mente captus*).^{*} One who does not think of what he does or says; (*qui non cogitat quid agit aut loquitur*). 4 *Co.* 128; *Beverly's case*. Distinguished by Lord Coke from *amens*, who is a person wholly insane (*qui prorsus insanit*). *Id. ibid.* Calvin also distinguishes *demens* from a madman or lunatic. *Calv. Lex*.

DEMENTENANT EN AVANT. L. Fr. From this time forward. *Kelham*.

DEMENTERS, *Dementiers*. L. Fr. In the mean time; meanwhile. *Kelham*.

DEMESNE, *Demeyne*, *Demaine*, *De-meigne*. L. Fr. [Lat. *suus, proprius*.] Own; one's own. *De son tort demesne*, (q. v.); of his own wrong. *De son seignour demeyne*; of his own lord. *Britt.* c. 38.

DEMESNE, *Demeyne*, *Demaine*, *De-main*. L. Fr. and Eng. [L. Lat. *demanium, domanium, dominicum*.] In old European law. Land which a man held originally of himself, as distinguished from that held of a superior lord. *Hotoman in Verb. Feud. voc. Dominicum*. *Cowell*. *Allodium*, in contradistinction to *feodum*; absolute property or ownership. 2 *Bl. Com.* 104.

In old English law. Lands wherein a man had *proper dominion or ownership*, as distinguished from the lands which another held of him *in service*. *Co. Litt.* 17 a. *Disseisi de son propre tenement que il avera tenu en demeyne et en severalle*; disseised of his own proper tenement which he shall have held in demesne and in severalty. *Britt.* c. 42. This is one of the proper and original significations of the term in English law, and has received much illustration from Bracton, who dwells on the primary distinction between lands held *in demesne*, (*in dominico*), and those held *in service*, (*in servitio*). *Bract.* fol. 75, 80. The true and essential meaning of *demesne* seems to have been,—land which a man had under his immediate control, either by having it in his actual manual possession, (see next definition,) or, (where it was in the occupation of others,) by having the right to resume possession at pleasure; as was the case with lands held in villeinage, which Bracton calls *quasi dominicum*. *Bract.* fol. 263. *Id.* fol. 98. It was the *lord's own land*, and hence properly called *dominicum*, (from *dominus*), in contradistinction to what was *held* by his *tenants*, and which was, with equal propriety, called *tenementum*, (*tenement*, or *holding*). The latter could not be taken back from the tenant (that is, the *free tenant*), as long as he performed the *services* and had heirs, as it could from a *villein*, (the tenant having in fact, in such case, himself the *demesne* or *dominicum*), but if he committed felony, or died without heir, then the land went back to the lord as an *escheat*, and the phrase was, *tenementum cadit in dominicum*;—the *tenement* falls or is turned into *demesne*; that is, it went back into the lord's own hands, and was *tenement* no longer, (*revertitur ad capitalem*

dominum in dominico). *Bract.* fol. 81. See *infra*; and see *Dominicum*.

Land which was manually occupied, manured, and possessed for the necessary sustentation, maintenance and support of the lord and his household. *Co. Litt.* 17 a. Land held for the support of one's own table, answering to the English *bordlands*; (*quod quis habet ad mensam suam et proprie, sicut sunt bordlandes, Anglice*). *Bract.* fol. 263.

* * * These are the principal significations of the word *demesne*; others will be noticed under *Dominicum*. As to its etymology, there have been various suggestions, viz.: *demesne*, a man's *own* land; *de main*, that of which he has *manual* occupation; *domus*, that which is kept for the support of the *household*. *Co. Litt.* 17 a. All these, together with the word *demesne* itself, are rejected by Spelman, who considers the proper spelling to be *demain*, the French form of the Latin *dominicum*, the original word, formed from *dominus*. See *Dominicum*.

Under this head it may be proper to consider the import of the phrase,—“in his demesne as of fee,”—(L. Lat. *in dominico suo ut de feodo*;) a phrase of great antiquity in English law, and still retained as descriptive of the highest estate that a subject can have in land. It formed a part of the old writ of assise of mort d'ancestor, and of the count upon a writ of right, and is thus explained by Sir William Blackstone: “Where a man possesses land merely in his own right, without owing any rent or service to any superior, he is said to be seised thereof absolutely, *in dominico suo*, in his own demesne. But all the lands in England, being holden mediately or immediately of the king, are in the nature of *feodum*, or fee, and hence, in expressing the strongest and highest estate that any subject can have, he is said to be ‘seised thereof in his demesne as of fee.’ It is a man's *demesne*, *dominicum*, or property, since it belongs to him and his heirs forever; yet this *dominicum*, property, or demesne, is strictly not absolute or allodial, but qualified or feodal; it is his demesne *as of fee*; that is, it is not purely and simply his own, since it is held of a superior lord, in whom the ultimate property resides.” 2 *Bl. Com.* 105.

Mr. Stephen, in his *New Commentaries*, very justly remarks upon the expression of Blackstone in the above passage,—“it is a man's demesne, since it belongs to him and

his heirs forever,"—that it assigns no meaning to the words "in his demesne" beyond what would belong to the other words with which they are connected; and he substitutes, according to the plan of his work, the following explanation of the phrase under consideration: "Where a man claims an estate in fee simple in possession in a corporeal hereditament, the precise technical expression is as follows: that he is 'seised in his demesne as of fee' (in *dominio suo ut de feodo*); the words in *dominio*, or 'in his demesne' signifying that he is seised as owner of the land itself, and not merely of the seignior or services, and the words 'as of fee' importing that he is seised of an estate of inheritance in fee simple, and also, (in reference to the original meaning of the term *fee*,) that he is not the absolute or allodial owner, but holds (feudally) of a superior lord." 1 *Steph. Com.* 220. And in a note on this passage, the same author adds, "there is abundant authority for holding that *dominium* properly signifies the land which the feudal lord retained to his own use for sustentation of his household, as distinguished from what he granted out on services, and that the true sense of seisin in demesne is that given in the text." *Id. ibid.* note (x). In addition to these remarks, and to the passages cited by the learned serjeant from Fleta and Bracton in support of them, the compiler of this work would venture to submit the following: *Demesne* does not appear to have ever had in England the sense of allodial estate upon which the explanation of Blackstone is based, and *fee*, so far from being employed to restrain or qualify demesne, seems to have been always employed (where the terms were used together) to give it enlargement. Demesne was frequently applied to mere estates for life; so often, indeed, that Spelman considers it as peculiarly descriptive of that species of estate. *In dominio seisitus dicitur qui tenet terras aut tenementa ad terminum vite*. The term was, in fact, applied to estates both for life and in fee, though not peculiar to either, its proper use being rather to denote the manner in which an estate was held, than the duration of it. *Bract.* fol. 263. *Britt.* c. 78. It was applied, (and that without any qualification of *fee*) as often to the estate of a tenant as that of a lord, which is entirely inconsistent with the idea of its denoting allodial property. *Bract.*

fol. 46 b, 263, ¶ 4, 5. A man, according to Bracton, might hold land in demesne, and not in fee, which was the estate of a freeholder, or free tenant for life; and, on the other hand, a man might hold in fee and not in demesne, which was the estate of a chief lord. *Bract.* fol. 263 b, ¶ 6. *Demesne*, in the phrase now under consideration, signifies (as explained under the word, *supra*), absolute control of property, and *fee*, though implying tenure, serves primarily to mark the duration of the estate, viz. to a man and his heirs. *Bract. ibid.* To be *seised in demesne as of fee*, therefore properly means to have the absolute control of land, (that is, subject to rendering the services due, and saving the right of termors, or tenants for years,) and to enjoy it as an estate of inheritance, (*ut de feodo*, as of fee). See *Dominium*.

This interpretation is derived from the very full exposition of the phrase and its component terms, given by Bracton in treating of the assise of mort d'ancestor in his fourth book, where the whole seems to be summed up in the following sentence: *Et unde ex præmissis colligi potest, quod unus potest esse seysitus de aliqua terra vel redditu in dominio suo ut de feodo, et de libero tenemento simul, vel tantum ut de feodo, vel [et?] non in dominio, vel tantum ut de libero tenemento et in dominio, non tamen in feodo, sicut dici poterit de illis qui tantum tenent ad vitam, quacunque ratione*. And hence it may be gathered from the premises, that one may be seised of any land or rent in his demesne as of fee, and of freehold at the same time; or only as of fee, or [and?] not in demesne; or only as of freehold and in demesne, yet not in fee; as may be said of those who only hold for life, in whatever way. *Bract.* fol. 263 b, 264. The same author takes notice of, and comments on the peculiar expression "*as of fee*," which he says in some cases denoted merely resemblance or appearance, in the sense of *quasi* (as it were); in others, actual *verity* or reality, in the sense of *sicut* (even as, just as); being applicable, in the latter sense, only to possession under a *lawful* title; so that "to be seised *as of fee*" meant, in such cases, nothing more in effect than "to be seised in fee." *Bract. ub. sup.*

DEMESNE LANDS. [*L. Lat. terra dominicales.*] In English law. Those lands of a manor not granted out in tenancy, but reserved by the lord for his own use and

occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of *tenemental* lands, (*terra tenementales*). Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. *Spelman*, voc. *Dominicum*. 2 *Bl. Com.* 90. See *Demesne*, *Dominicum*.

DEMESNE LANDS OF THE CROWN. [*L. Lat. terra dominicales regis.*] In English law. That share of lands reserved to the crown at the original distribution of landed property; or such as came to it afterwards by forfeitures, or other means. These anciently were very large and extensive, but at present are contracted within a very narrow compass, having been almost entirely granted away to private subjects. 1 *Bl. Com.* 286. 2 *Steph. Com.* 550. See *Crown lands*.

DEMETTRE. *L. Fr.* To let go; to part with; to put away. *Kelham.* *Demette se*; parts with. *Id.*

DEMEYNE. *L. Fr.* Demesne. *En demeyne, si est dit a la difference de ceo que est tenu en seignoury, ou en service, ou en commun ovesque autres*; in demesne is so called to distinguish it from that which is held in seignior, or in service, or in common with others. *Britt.* c. 78.

Demeynes; demesne lands. *Car vos demeines sont tiels come nos demeynes*; for your demesnes are such as our demesnes. *Id. ibid.*

DEMI-MARK, *Demy-mark.* [*L. Lat. dimidia marca.*] In old English practice. Half a mark; a sum of money of the value of six shillings and eight pence, the tender of which was formerly necessary in a writ of right; the effect of such tender being to put the demandant, in the first instance, upon proof of the seisin as stated in his count, that is, to prove that the seisin was in the king's reign there stated. *Roscoe's Real Act.* 216. 2 *Bl. Com.* Appendix, No. I. sect. 6. *F. N. B.* 5 M. *Holt's N. P. Cas.* 657. See *Cowell*, voc. *Half-mark*. According to Mr. Reeves, it was something given to obtain the favor of a trial by the grand assise. 1 *Reeves' Hist.* 429, 430. See *Mark*.

DEMINUERE. *Lat.* In the civil law. To alienate; to part with; to lose. *Dig.* 37. 10. 5. 3.

DEMINUTIO. *Lat.* [from *deminuere*.] In the civil law. A taking away; loss or deprivation. See *Capitis deminutio*.

DEMI-SANGUE, *Demy-sangue.* *L. Fr.* Half-blood. See *Half-blood*.

DEMISABLE. That may be demised. 1 *Crabb's Real Prop.* 607, § 768. Demisability; the quality of being demisable. *Id. ibid.*

DEMISE. [*L. Lat. demissio, dimissio, qq. v.*] In conveyancing. A conveyance of an estate to another for life, for years or at will; most commonly, for years; a lease. 1 *Steph. Com.* 475. 2 *Crabb's Real Prop.* 230, 233, § 1274, 1280. 1 *Penn. St. R.* 126, 129, 131. See *Lease*.

A charter party is sometimes considered as a demise of a ship, (*locatio navis*). *Abbott on Ship.* [46,] 50. *Id.* [288, 289,] 365, 366. 3 *Kent's Com.* 202.

To **DEMISE.** [*L. Lat. demittere, dimittere, to send away, or part with.*] In conveyancing. To convey or create an estate for years or life; to lease. The usual and operative word in leases:—"have [or hath] granted, demised, and to farm let, and by these presents do [or doth] grant, demise and to farm let." 2 *Bl. Com.* 317. 1 *Steph. Com.* 476. *Co. Litt.* 45 b. See *Demise*.

DEMISE OF THE KING, or CROWN. [*L. Lat. demissio, [dimissio] regis vel coronae*; *L. Fr. demise le roy.*] In English law. The natural dissolution of the sovereign, or the disunion of the king's natural body from his body politic, by which the kingdom is transferred or demised to his successor, and the royal dignity becomes vested at once in the latter, without any interregnum or interval. 1 *Bl. Com.* 249. *Plowd.* 177, 234. The word *death* is not used; the principle being that the sovereign never dies. (*Rex nunquam moritur.*) 1 *Bl. Com. ub. sup.* 2 *Steph. Com.* 499. *Broom's Max.* 22, [38.] The technical phrase in the old writs is that the king demised (or separated) himself from the government of his kingdom; (*de regimine regni sui se dimisit*). *Reg. Orig.* 233, 234. *Reg. Jud.* 12. See *Dimittere*.

DEMISE AND RE-DEMISE. In conveyancing. Mutual leases made from one party to another on each side, of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent, (as of a pepper-corn,) and B. re-demises the same property to A. for a shorter time at a real substantial rent. *Jacob. Whishaw.*

DEMISI. L. Lat. [from *demittere*, q. v.] I have demised or leased. *Demisi, concessi, et ad firmam tradidi*; have demised, granted and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 *Bl. Com.* 317, 318. From the word *demisi* in a lease, the law implies a covenant upon the part of the lessor that, at the time of the delivery of the lease, he had full power and authority to demise to the lessee for the time and on the terms expressed in the lease. *Hob.* 12 a. *Archb. Landl. and Ten.* 272.

DEMISSIO. L. Lat. [from *demittere*, q. v.] In old English law. A demise, or lease. *Ex demissione*, (q. v.); on the demise.

A transfer. *Demissio coronæ*; a transfer or demise of the crown. 1 *Bl. Com.* 249. See *Demise of the king*.

DEMITTERE. L. Lat. [from *de*, from, and *mittere*, to send.] In old conveyancing. To transfer; to demise or lease. See *Demisi*.

To send away, or part with. See *Demittere*.

DEMI VILL. Half a vill. One of the smallest of the ancient civil divisions of England; consisting of five freemen, or frank-pledges, with their families. 1 *Bl. Com.* 115. 1 *Steph. Com.* 116. *Spelman*, voc. *Hamel*. See *Vill*.

DEMOER, Demorger. L. Fr. To stop, or stay; to remain; to abide or dwell with. *Britt.* c. 16. *Kelham*. See *Demorer*.

DEMOERE. L. Fr. Protest; protestation; declaration. *Kelham*.

DEMOLLIRE, Demolire. Lat. In old English law. To demolish; to throw down or overthrow. *Bract.* fol. 115, 233. *Demollitio*; a demolishing. *Id.* fol. 234.

DEMONSTRATIO. Lat. [from *demonstrare*, to point out, or show.] Demonstration; description, denomination or addition; the designation of a person or thing by words of addition, or reference; or what Lord Bacon calls "notes" and "signs to call;"—as, "J. S. son and heir of G. S.;" or, "clerk of such a court;" or, "my close called Dale, in the parish of Hurst, in the county of Southampton." *Bacon's Max.* 99, 100, 101. To this head belong the following maxims, (qq. v.) *Falsa demonstratio non nocet*. False description does not injure. *Præsentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis*. The

presence of a thing itself takes away the effect of error in the name of it, and the truth of the name takes away the effect of error in the demonstration or description. *Bac. Max.* 96, reg. 25. *Non accipi debent verba in demonstrationem falsam, que competent in limitationem veram*. Words ought not to be taken to import a false demonstration, when they can be understood as words of true limitation. *Id.* 59, reg. 13.

Demonstratio is defined in the civil law, "an accessory designation of persons or things by circumlocution." 1 *Mackeld. Civ. Law.* 169, § 175. This occurred often in testaments; as "Stichus, my slave, born in my family," (*Stichum servum meum vernam*); "Stichus, my slave, whom I bought of Seius," (*Stichum servum quem a Seio emi*). *Inst.* 2. 20. 30. And the rule respecting it was the same as in the common law: *Falsa demonstratio legatum non perimitur*. A legacy is not rendered null by a false description. *Id. ibid.* See *Dig.* 35. 1. 17, 34.

DEMONSTRATIO FALSA. See *Falsa demonstratio*.

DEMORAGE. An old form of *Demorage*, (q. v.) 1 *W. Bl.* 291.

DEMORARI. Lat. [L. Fr. *demorer, demeurer*.] In old pleading. To wait, stay or abide; to pause, stop or rest; to demur. *Steph. Pl.* 44. *Demoratur*; (he) demurs. *Moratur in lege*; (he) rests or abides in law. *Termes de la Ley*, voc. *Demurrer*.

DEMORER, Demorier, Demourier. L. Fr. [from Lat. *demorari*, q. v.] To remain or stay; to abide, reside or dwell. *Pur suffer eux demorer a leur mesons*; for suffering them to stay at their houses. *Britt.* c. 21. *Demorauntz en pays*; residing in the country or neighborhood. *Id. ibid.* *L'autre partie doit demorer al purchaser*; the other part ought to remain with the purchaser. *Id.* c. 39. *Pur demorer ensemble*; to live together. *Id.* c. 101. *A demorer en prison*; to stay in prison. *Rot. Parl.* 4 *Hen.* IV.

DEMPSTER, Dempstare, Doomster. In Scotch law and practice. An officer of court, whose duty it was to pronounce the doom or sentence of the court. *Skene de Verb. Signif.* voc. *Curia*. "Be dome pronuncit be the mouth of Andro Lindesay, dempstare of the said court." 1 *How. St. Trials*, 927. See 1 *Pitcairn's Crim. Trials*, part 1, pp. 129, 132. *Id.* part 2, p. 8. See *Dome, Doom*.

DEMUR. [from L. Fr. *demurer, demor-*

rer, to stop, stay, or rest.] In pleading. To raise an objection in point of law, and rest or pause upon it, referring its decision to the court; to object to the pleading of the opposite party as insufficient to sustain his action or defence, and refer it to the judgment of the court whether it ought to be answered; in the language of the old books, to abide in law. "He which demurreth in law is said he that *abideth* in law—*moratur* or *demoratur in lege*." *Co. Litt.* 71 b. To "demur in law," to "demur in judgment," are phrases of constant occurrence in the old books.

DEMURER, *Demurrer*, *Demeurer*. L. Fr. In old English law. To rest or stay; to abide or remain. *Il fuit agard al Flete, et la demurt tanques*, &c.; he was awarded (sentenced) to the Fleet, and there remained until, &c. *Yearb.* T. 10 Edw. III. 28. *Demurt en abeyance*; it rests or remains in abeyance. *Litt.* sect. 649. *Agardomus que la parole demurge tanques à son age*; we award (give judgment) that the parol (pleadings) demur (or stay) until his age. *Yearb.* H. 6 Edw. III. 4. See *Parol demurrer*.

In pleading. To abide or rest in law or judgment. *Voiles demurrer en jugement, au peril que appent*. P. 5 Edw. III. 23. *Et sur ceo le plf demurre en ley*. *Dyer*, 70 b, (Fr. ed.) *Nous demurroins en vos discretions*. H. 3 Edw. II. 66.

DEMURRAGE, *Demorage*. [L. Lat. *demoragium*.] In maritime law. The detention of a vessel by the freighter, beyond the time allowed by the charter party for loading or unloading, or for sailing.* 3 *Kent's Com.* 203.

The allowance or payment made for such detention or delay. *Id. ibid.* 2 *Steph. Com.* 185. *Abbott on Ship*. [304,] 381.

DEMURRER. L. Fr. and Eng. [from L. Fr. *demurer*, *demorer*; L. Lat. *demorari*, to wait, stop, or stay.] In pleading. Literally, a pause, or rest. A resting in the judgment of the law. *Finch's Law*, b. 4, c. 40. A kind of pause or stop put to an action, [and usually in the pleadings,] upon a point of difficulty which must be determined by the court, before any further proceedings can be had. *Cowell*. *Mansel on Demurrer*, 1.—An exception or objection by one of the parties to an action, to the pleading of the opposite party, as being insufficient in law to sustain his action or defence, upon which the party so objecting

rests or abides upon the point in question, (*moratur* or *demoratur in lege*), and submits it to the judgment of the court.* 1 *Lill. Abr.* 435. 3 *Bl. Com.* 314.—A declaration that the objecting party *will not proceed* with the pleading, because no sufficient statement has been made on the other side, but will wait the judgment of the court, whether he is bound to answer. *Steph. Pl.* 44. *Co. Litt.* 71 b. Strictly, a demurrer is not an answer, although it is sometimes considered as such. 6 *Peters' R.* 327.—An abiding in point of law, and a referring to the judgment of the court whether the declaration or plea of the adverse party is sufficient in law to be maintained. *Mansel on Demurrer*, 1.

An issue joined upon matter of law, to be determined by the judges. *Finch's Law*, lib. 4, c. 40. See *Issue in law*.

DEMURRER. In equity pleading. An objection to the complainant's bill in a suit in equity, of nearly the same nature as a demurrer in law, being an appeal to the judgment of the court, whether, upon the face of the bill itself, the defendant shall be bound to answer; as for want of sufficient matter of equity therein contained. 3 *Bl. Com.* 446. 4 *Steph. Com.* 21.

A demurrer is an allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth, they are insufficient for the plaintiff to proceed upon, or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or because of the omission of some matter which ought to be contained therein, or for want of some circumstance which ought to be attendant thereon, the defendant ought not to be compelled to answer. It therefore demands the judgment of the court, whether the defendant shall be compelled to make answer to the plaintiff's bill or to some certain part thereof. *Mitford's Chanc. Pl.* 107, 108, [128, 129, Moulton's ed. and notes, *ibid.*]

DEMURRER TO EVIDENCE. In practice. An objection or exception by one of the parties to an action at law, to the evidence produced by the opposite party on the trial, as being *insufficient in law*, (admitting it to be true in fact,) to maintain or overthrow the issue; and referring it to the court to determine what the law is upon the facts as shown in evidence.* 3 *Bl. Com.* 372. 3 *Steph. Com.* 615. 2 *H. Bl.* 187. A mode of proceeding by which the court

may be called upon to give judgment as to the law upon the facts attempted to be given in evidence upon the trial. *Mansel on Demurrer*, 119. If a party wishes to withdraw from the jury the application of the law to the fact, and all consideration of what the law is upon the fact, he *demurs in law* upon the evidence, and the precise operation of that demurrer is to take from the jury, and refer to the judge, the application of the law to the fact. *Eyre, C. J. 2 H. Bl.* 187, 206. It is analogous to a demurrer in pleading, the party from whom it comes declaring that *he will not proceed*, because the evidence offered on the other side is not sufficient to maintain the issue. *Steph. Pl.* 90. See *2 Tidd's Pr.* 865. *Co. Litt.* 72.

DEMURRER BOOK. In practice. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument. *3 Bl. Com.* 317. *3 Steph. Com.* 581.

DEMY-SANGUE, Demysanke. L. Fr. Half-blood. See *Half-blood*.

DEN, Dene. Sax. [L. Lat. *dena*.] In old records. A valley, vale, or dale. *Spelman, voc. Dena. Co. Litt.* 46.

A hollow or low place among woods. *Cowell*.

DEN AND STROND. In old English law. Liberty for ships or vessels to run aground, or come ashore. *Cowell*.

DEN'. An abbreviation of *Denarius*, (q. v.)

DENA. L. Lat. A hollow or valley, especially in woody ground; a den. *Cowell. Spelman.* Frequently used in Domesday Book as a sort of measure of land. *Tres denæ de sylva*; three dens of wood. *Id.*

DENARATA. L. Lat. [from *denarius*, a penny.] In old English law. The value or worth of a penny. *Denarata redditus*; a penny rent. *Reg. Orig.* 1 b. *Towns. Pl.* 64. See *Denariatus*.

DENARIATUS. L. Lat. [from *denarius*, q. v.] In old English law. The price of a thing, consisting of a penny, (*pretium rei quæ denario constat*). *Spelman.* A penny's worth. *Fleta, lib. 2, c. 73, § 3.*

DENARIL (pl. of *Denarius*, q. v.) Lat. and L. Lat. In old English law. Pennies; pence. *Quando quarterium frumenti venditur pro duodecim denariis*; when the quarter of corn is sold for

twelve pence. *Fleta, lib. 2, c. 9, § 1. Viginti denarii faciunt unciam*; twenty pennies make an ounce. *Id. c. 12, § 1.*

Money in general, (*pecunia in genere*). *Spelman, voc. Denarius.* Any sort of *pecunia numerata*, or ready money. *Cowell. Towns. Pl.* 180.

DENARIUS. L. Lat. [Fr. *denier*.] A penny; an English penny. By the statute called *Compositio Mensurarum*, 51 Edw. I. [Hen. III.] it was declared that the penny sterling of England (*denarius Angliæ qui nominatur sterlingus*,) should weigh 32 grains of corn from the middle of the ear, and 20 pennies [penny weights] should make an ounce, and 12 ounces a pound. *Spelman. Fleta, lib. 2, c. 12.* See *2 Inst.* 575.

DENARIUS. Lat. In the Roman law. A silver coin of the value of ten *asses*, or ten pounds of brass. Its value in modern money is estimated at 7½d. sterling, or about 14½ cents. *Encyclop. Amer. Branda.*

DENARIUS DEL. L. Lat. In old English law. God's penny. Earnest money, formerly given and received by the parties to contracts, to bind the contract. *Carta, 31 Edw. I. m. 4*, cited in *Cowell*, and given at length in *Molloy de Jur. Mar.* 370—380. So called, because the money so used was given to God, that is, to the church, or the poor. *Cowell.* See *Argentum Dei, Earnest, Money of adieu.*

DENARIUS TERTIUS COMITATUS. L. Lat. In old English law. The third penny of the county. The third part of the fines and profits arising from the county courts, which anciently were reserved to the comes, or earl, as his official stipend. *Spelman, voc. Comes. LL. Edw. Conf. c. 31. Lib. Nig. Scacc. cited ibid. Cowell.*

DENELAGE. See *Danelage*.

DENER, Denier, Denire. L. Fr. A penny. *Deners, deneres, denerez, denrees, danree*; money. *Kelham. Deners expromptes*; money borrowed. *Britt. c. 28.*

DENER SEINT PERE. L. Fr. Saint Peter's money. Peter pence. *LL. Gul. Cong.* 1. 18.

DENGLETERRE. L. Fr. Of England. Written as one word for *de Engleterre*. *Britt. fol. 1, 2.*

DENIER. L. Fr. In old English law. Denial; refusal. *Denier* is when the rent (being demanded upon the land) is not paid. *Finch's Law, b. 3, ch. 5.*

DENIER. L. Fr. To refuse. *Low en*

smith denie de ferrer mon chival. Keilw. 50, pl. 4.

DENIER. L. Fr. A penny. *Litt.* sect. 235. See *Dener*.

DENIZATION. In English law. The act of making a denizen. *Cro. Jac.* 540. *Co. Litt.* 129 a. See *Denizen*, *Naturalization*.

DENIZEN. [from L. Fr. *donaison*, (Lat. *donatio*), a gift; or *deins nee*, born within. See *infra*.] In English law. An alien born who has obtained *ex donatione regis* (from the king's gift,) letters patent to make him, either permanently or for a time, an English subject; a high and incommunicable branch of the royal prerogative. 1 *Bl. Com.* 374. 2 *Steph. Com.* 431. See 1 *Id.* 406. 7 *Co.* 25, *Calvin's case*. *Cro. Jac.* 539, 540. "Denizen is one that is but *subditus insitivus* or *adoptivus*, and is never by birth, but only by the king's charter, and by no other mean." *Bacon's Arg.* Case of the Post-nati of Scotland, *Works*, iv. 327, 328. A denizen is in a kind of middle state between an alien and a natural born subject, and partakes of both of them. He may take lands by purchase or devise, which an alien may not, but cannot take by inheritance. 1 *Bl. Com.* 374. 2 *Steph. Com.* 431. See 1 *Id.* 406. *Calvin's case*, 7 *Co.* 1. *Cro. Jac.* 539, 540.

A natural born subject; one born within (*deins nee*) the king's ligeance, and called in Latin *indigena*, the king's liegeman. *Co. Litt.* 129 a. But this is not the ordinary sense of the word. *Id. ibid.* 6 *Peters' R.* 117, and note.

DENOMBREMENT. Fr. In French feudal law. A minute or act drawn up, on the creation of a fief, containing a description of the fief, and all the rights and incidents belonging to it. *Guyot, Inst. Feod.* ch. 8.

DENOMINATIO. Lat. In old English law. Denomination; description; title. *Denominatio est a digniore.* Denomination is from the more worthy. *Bacon's Works*, iv. 261.

DENUNCIATION, *Denunciation.* [from Lat. *denunciatio*.] In Scotch practice. The act by which a person is declared to be a rebel, who has disobeyed the charge given on letters of horning. *Bell's Dict.*

DENUNTIARE, *Denunciare.* Lat. In the civil law. To give notice or warning, to summon. *Inst.* 4. 6. 15. *Calvin's Lex. Jurid.*

In old English law. To give notice; to

summon. *Quod denunciare faciat tenenti quod sit ad certum diem certo loco*; that he cause notice to be given to the tenant that he be at a certain day at a certain place. *Bract.* fol. 307.

DENUNTIATIO, *Denunciatio.* Lat. [from *denunciare*, q. v.] In old English law. A notice or summons. *Bract.* fol. 302 b.

A public notice or publication, as of banns. *Id.* fol. 307 b.

DEODAND. [L. Lat. *Deo dandum*; a thing to be given to God.] In English law. Any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown, to be applied to pious uses, and distributed in alms by the high almoner. 1 *Hale's P. C.* 419. *Fleta*, lib. 1, c. 25, § 9. *Bract.* fol. 122. 1 *Bl. Com.* 300. 2 *Steph. Com.* 365. 3 *Ad. & Ell.* N. S. 333. 8 *Id.* 587. Deodands included both animate and inanimate objects; thus, if a horse or other animal killed a person, or a cart ran over him, the horse or cart was forfeited as a deodand. So, the instrument with which a person was killed, as a sword or knife, was forfeited in the same manner. 1 *Bl. Com.* 301, 302. Deodands are unknown in American law, and have recently been abolished in England by statute 9 & 10 Vict. c. 62. *Oliphant on Horses*, Appendix.

* * * From the phraseology of the rule in the old books, expressed by the verse,

Omnia quæ movent ad mortem sunt Deo danda, (all things which move to death are deodands, *Dyer*, 77 b,) some have been led to confine the proper meaning of deodand to such things as caused death by their motion, or by being put in motion. Thus Spelman defines them to be all things, whether brute animals or inanimate objects, by a stroke from which the life of a man is unduly taken away, (*quorum impetu vita hominis indebite tollitur*); as by the kick of a horse, the goring of an ox, the falling of a beam, the motion of a carriage. In an old case, the fore-wheel of a wagon was said to "move to the death of a man." *Say.* 249. But *movere ad mortem* may also be translated "to tend or lead to death," "to occasion, or contribute to produce death;" a sense to which Spelman also alludes. Accordingly the rule always was that where death was occasioned by a fall from an object at rest, the latter was forfeited as a deodand. *Britt.* cc. 1, 7. *Fleta*, lib. 1, c.

25, § 9. 1 *Hale's P. C.* 422. Much importance, however, seems to have been from an early period, attached to the circumstance of the object being in *motion*, which led to some distinctions in the later law on this subject.

DEPART. [L. Lat. *departire, decedere.*] In pleading. To forsake or abandon the ground assumed in a former pleading, and assume a new one. See *Departura*.

In old English law. To divide or separate; to part; (L. Fr. *departir*). *Cowell*. See *Departir*.

In maritime law. To leave a port; to be out of a port. To *depart* imports more than to *sail*, or set sail. A warranty in a policy, that a vessel shall *depart* on or before a particular day, is a warranty not only that she shall sail, but that she shall be out of the port on or before that day. 3 *M. & S.* 461. 3 *Kent's Com.* 307, note. *Cowen*, J. 3 *Hill's R.* 118, 126. "To depart" does not mean merely to break ground, but fairly to set forward upon the voyage. 6 *Taunt.* 241.

DEPARTABLE. L. Fr. Divisible. *Britt.* c. 72. *Yearb.* T. 2 Edw. III. 5.

DEPARTIR, *Departier*. L. Fr. To divide. *Pur ceo que rien remeynt à departir entre les autres parcerens*; because nothing remains to divide between the other parcerens. *Britt.* c. 72. *Departi, departy*; divided. *Id. ibid.* *La departie*; the separation. *Kelham*.

DEPARTISON. L. Fr. Division; partition. *Yearb.* P. 8 Edw. III. 17.

DEPARTURE. [L. Lat. *departura, decessus.*] In pleading. The abandonment of the ground of a former pleading, and the adoption of another.* 2 *Saund.* 84 a, note (1).

A departure takes place when, in any pleading, the party deserts the ground that he took in his last antecedent pleading, and resorts to another. *Steph. Pl.* 410. Or, in other words, when the second pleading contains matter not pursuant to the former, and which does not support and fortify it. *Co. Litt.* 304 a. Hence, a departure obviously can never take place till the replication. *Steph. Pl.* 410. The rule against departure is a primary one in pleading, and is ably illustrated by Mr. Stephen. Each subsequent pleading must pursue or support the former one; i. e. the replication must support the declaration, and the rejoinder the plea, without departing out of it. 3 *Bl. Com.* 310.

DEPARTURE IN DESPITE OF COURT, in old English practice, was when the tenant in a real action, after once appearing and being present in court, failed to appear upon demand. For being, in contemplation of law, actually in court at the time when he was demanded, he was considered as having actually departed in despite or contempt of the court.* *Roscoe's Real Act.* 283, 284.

DEPASTURE. In old English law. To pasture. "If a man *depastures* unprofitable cattle in his ground." *Burn.* 1, case 1.

DEPENDENCE. In Scotch practice. Pendency.

DEPENDENT COVENANTS, are those in which the performance of one depends on the performance of the other.

DEPENDING. In practice. Pending or undetermined; in progress. See 5 *Co.* 47.

DEPESAS. Span. In Spanish-American law. Spaces of ground in towns reserved for commons or public pasturage. 12 *Peters' R.* 433, note. *White's New Recop.* b. 2, tit. 1, c. 6.

DEPONE. Sc. [from Lat. *deponere*, q. v.] In Scotch practice. To depose; to make oath in writing.

DEPONENT. [Lat. *deponens*, from *deponere*, q. v.] In practice. One who *deposes*, (that is, testifies or makes oath in writing) to the truth of certain facts; one who gives, under oath, testimony which is reduced to writing; one who makes oath to a written statement. The party making an affidavit is generally so called. See *Depose*, *Deposition*.

DEPONER. Sc. In old Scotch practice. A deponent. 3 *How. St. Trials*, 695.

DEPONERE. Lat. [from *de*, off or down, and *ponere*, to put, place or lay.] In the civil law. To put down; to lay down. *Non aliter litium primordium accipere, nisi prius ante sedem judicalem sacrosanctæ deponentur scripturæ, et hæc permaneant, &c.*; shall not enter on the trial of causes, unless the holy Scriptures be first laid down before the judgment-seat, and these shall remain, &c. *Cod.* 31. 14. See *Id.* 2. 59. 2, pr.

To deposit; to entrust a thing to another to keep. *Dig.* 16. 3. 1. 14. See *Depositum*.

To testify; to state on oath; to depose. *Nisi prius, tactis sacrosanctis scripturis, de-*

ponant *quod*, &c.; unless they shall first depose, after having touched the holy Scriptures, that, &c. *Cod.* 2. 59. 1. 1. *Ut deponant quas noverint.* *Cod.* 4. 20. 16. See *Depositio*. This word does not occur, in this sense, in classic writers, nor in the *Digesta*.

DEPONERE. L. Lat. [from *de*, down, and *ponere*, to put or lay.] In old English law. To put down; to put away; to pull down; to remove. *Omnes kidelli de cætero deponantur penitus per Tamisiam et Medwiciam*; all kidells shall be henceforth wholly removed throughout the Thames and the Medway. *Mag. Cart.* 9 Hen. III. c. 23.

In old practice. To put or lay down; to depose. See *Depose*.

To state under oath. *Bract.* fol. 293. Applied by Bracton to the delivery of the verdict of a jury. *Qui veritatem rei deponent ex integro*; who shall depose the truth of the matter anew. *Id. ibid.* The word occurs very frequently in this sense in the canon law. *Durand. Spec. Juris*, lib. 1, tit. *De teste*.

To make oath; to swear. In the case of *Knight v. Rushwood*, the defendant assumed to the plaintiff that if he and two witnesses would *deponere* before the Mayor of Lincoln, that a certain obligation was read as an obligation of 200l. he would pay it. Whereupon the plaintiff, with two others, came before the Mayor of Lincoln, and there *deposed upon a book* accordingly, and hereupon brought the action. It was objected on argument, that *deponere* was a word uncertain, for *deponere* was, to lay down; but it was held certain enough, for to *depose* or *lay down* are, in truth, *synonyma et tantamount*. *Cro. Eliz.* 469, 470. See 1 *Str.* 557, 561, *arg.*

DEPOPULATIO AGRORUM. In old English law. The crime of destroying, ravaging or laying waste a country. 2 *Halé's P. C.* 333. 4 *Bl. Com.* 373.

DEPOPULATION. In old English law. A species of waste by which the population of the kingdom was diminished. Depopulation of houses was a public offence. 12 *Co.* 30, 31.

DEPORTATIO. Lat. [from *deportare*, to carry away.] In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, (*in insulam deportatur*;) and thus taken out of the number of Roman citizens, (*ex numero*

civium Romanorum tollitur;) being treated as though he were dead. *Inst.* 1. 12. 1. It was banishment for life, attended with the loss of civil rights and the forfeiture of property. *Relegatio* was banishment for years, without the loss of civil rights. *Cooper's Notes in loco.* *Dig.* 48. 22. *Calvin, Lex. Jurid.* Bracton uses the term *deportatio* as synonymous with exile, abjuration of the realm and outlawry. *Bract.* fol. 136 b.

DEPORTATION. Fr. and Eng. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the *deportatio* (q. v.) of the Roman law; and still in use in France. *Encyclop. Amer.*

DEPOSE. [L. Lat. *deponere*, q. v.] In practice. To state or testify under oath, in writing; to make a statement or give testimony under oath, which is reduced to writing; to make a statement which is reduced to writing and sworn to; to put down in writing what is afterwards sworn to.* A word constantly used in affidavits, as "A. B. of—, being duly sworn, *deposes* and says that," &c. See *Deposition*.

In old practice. To state under oath, without reference to writing; to testify or make oath to the truth of a thing. "*Deposed upon a book.*" *Cro. Eliz.* 470. See *Deponere*.

* * This word is undoubtedly derived from the Roman law of the Christian period, the Latin *deponere*, from which it is obviously formed, frequently occurring (with its derivatives) in the Code of Justinian, but not in any previous collection, in the sense of testifying or making oath. See *Deponere*. There seems also to have been a connection between the meaning of the word *deponere*, as used at this period, and the Christian mode of swearing upon the Scriptures, which tends to throw some light upon its essential meaning. See *infra*. From this source the word *deponere* was introduced into the canon law, in which it was constantly applied, with its derivatives, to the statements of witnesses in judicial proceedings. *Durand. Speculum Juris*, lib. 1, tit. *De teste*. From the latter source, again, it has probably derived its present peculiar application to *written* testimony, it having always been the practice, in the ecclesiastical courts, to reduce the proofs to writing. 3 *Bl. Com.* 100.

The proper meaning of *deponere* itself (to put or lay down,) has been supposed to imply the sense of putting down *in writing*; but there are very early instances of its use in English practice, without any reference to *written* statement. Thus, it is said in Bracton, of a jury, *veritatem rei deponent ex integro*, (they shall depose the truth of the matter anew,) clearly importing an *oral* statement, viz. the delivery of a verdict, under oath. *Bract. fol. 293.* The word appears to have been used in the same sense in *Knight v. Rushwood, Cro. Eliz. 469.* Besides, if "to put down *in writing*" be the radical sense of *depose*, it seems difficult to see the propriety of its application to a witness, who, in affidavits, is every day repeatedly called a *deponent*, and said to *depose*, though he commonly does not *put down* a line, and *writes* nothing but his signature. *Deposing*, in this sense, is rather the act of the officer who takes the testimony, than of the witness who gives it. In *Knight v. Rushwood*, the court held that "to depose and lay down are in truth synonyma;" but what the party swearing may be considered to *lay down* is not clear, unless perhaps there be some reference in the original use of the word to *laying the hand* upon the gospels, that being anciently, as at present, the usual form of making oath, as contrasted with the rarer form of swearing by the *uplifted hand*, (*erectis sursum manibus*). *Bract. fol. 143 b.* See *Hand, Oath, Corporal oath, Uplifted hand*. That the essential meaning of the word is in some way connected with the use of the Scriptures in the solemnity of making oath, seems indicated by the passages from the Code referred to under *Deponere, supra*. The rule established by Justinian required that the Scriptures should be *laid down* (*deponantur*) before the judgment-seat, before the hearing of a cause could be commenced, and kept there until its final termination. *Cod. 3. 1. 14.* The formality of laying hands upon, or touching the Scriptures, by the witness sworn, will be found under other heads.

In modern practice, however, *depose* has undoubtedly become fixed in the sense of *stating under oath what is reduced in full to writing*. Hence a party is now never properly said to *depose*, unless his statement is at the same time put down in writing, either by himself, or the officer before whom he is sworn and examined. In

open court, as on a trial before a jury, where no professed record is taken of his evidence, a witness is said to *testify*; out of court, as before a judge, commissioner or examiner, he is properly said to *depose*.

DEPOSIT. [Fr. *depôt*; Span. *deposito*.] A species of bailment, derived from the civil law, and called also, after that law, *depositum*. Lord Holt, who is followed by Sir William Jones, and Chancellor Kent have adopted the latter term in their definitions. 2 *Ld. Raym.* 909. *Jones on Bailm.* 36, *et seq.* 2 *Ken's Com.* 558, 560. Mr. Justice Story has made use of the English word *deposit*. *Story on Bailm.* § 4, 41, *et seq.* See *Depositum*.

DEPOSIT OF TITLE DEEDS. See *Equitable mortgage*.

DEPOSITARY. In the law of bailment. The person with whom a thing is deposited by another, (*is apud quem res deponitur*;) to be kept for the depositor or bailor, and returned upon demand, without a recompense; one who receives the goods of another to keep without compensation.* 2 *Ken's Com.* 560, *et seq.* *Bract. fol. 99 b.* *Inst.* 3. 15. 3.

DEPOSITION. In Scotch law. Deposit or *depositum*; the species of bailment so called. *Bell's Dict.*

DEPOSIT. Lat. Of deposit. The title of *Cod.* 4. 34. See *Dig.* 16. 3.

DEPOSITIO. Lat. [from *deponere*, q. v.] In the civil law. The testimony of a witness. *Cod.* 4. 20. 15, 17, 20. *Id.* 4. 21. 15.

DEPOSITIO. L. Lat. [from *deponere*, q. v.] In old practice. A deposition; the written testimony of a witness. *Reg. Brev.* Appendix, 53. *Bohun's Cursus Canc.* 266.

DEPOSITION. [L. Lat. *depositio*, q. v.] In practice. The testimony of a witness, put or taken down in writing, under oath or affirmation, before a commissioner, examiner or other judicial officer, in answer to interrogatories and cross interrogatories, and usually subscribed by the witness. 3 *Bl. Com.* 449. 2 *Tidd's Pr.* 810, 811. "The ordinary and usual meaning of the word *deposition* is confined to written testimony, at least in legal proceedings." *Story J. 1 Gallison's R.* 497, 501. A deposition is properly distinguished from an affidavit, (q. v.) which is always an *ex parte* statement drawn up in writing without any formal interrogation, and signed and sworn to by the party

making it; although in affidavits the party is constantly called a *deponent*, and said to *depose*. See *Depose*, *Deponent*.

In a more general sense. The act of giving testimony under oath; the testimony itself so given; a matter related upon oath. 1 *Stra.* 564, arg. This seems to have been the original sense of the word, though no longer in use, at least in American practice. Story, J. 1 *Gallison's R. ub. sup.*

DEPOSITO. Span. [from Lat. *depositum*, q. v.] In Spanish law. Deposit; the species of bailment so called. *White's New Recop.* b. 2, tit. 10, c. 1. *Schmidt's Civ. Law*, 193.

DEPOSITUM. Lat. [from *deponere*, to deposit.] In the civil and common law. A naked bailment of goods, to be kept for the bailor without reward, and to be returned when he shall require it. *Story on Bailm.* § 4, 41. 2 *Ken's Com.* 558, 559. *Jones on Bailm.* 36. *Inst.* 3. 15. 3. *Bract.* fol. 100 b. *Dig.* 16. 3. *Cod.* 4. 34. *Fleta*, lib. 2, c. 56, § 7. Otherwise termed *deposit*, (q. v.) the bailor being in this case termed the *depositor*, and the bailee, the *depository*. *Bell's Dict.*

DEPOT. Fr. A deposit; an act by which a person receives the property of another, binding himself to preserve it and to return it in kind. *Civil Code of Louis.* art. 2897.

DEPRIVATION. In English ecclesiastical law. The taking away from a clergyman his benefice or other spiritual promotion or dignity, either by sentence declaratory in the proper court, for fit and sufficient causes, or in pursuance of divers penal statutes which declare the benefice void for some nonfeasance or neglect, or some malfeasance or crime. 3 *Steph. Com.* 87, 88. *Burn's Eccl. Law*, tit. *Deprivation*.

DEPUES. L. Fr. Beaten or trodden down. *Yearb.* T. 11 Hen. VI. 12.

DEPUIS. L. Fr. Since. *L. Fr. Dict.*

DEPUTARE. L. Lat. In old English law. To appoint, fix, or designate. * *Si locus fuerit qui deputatus sit ad aliquem usum*; if it be a place which is designated for any use. *Bract.* fol. 210 b. *Id.* fol. 170 b, 363. *In campum ad duellum faciendum* deputatum; to the field appointed for making the duel. *Id.* fol. 141 b.

DEPUTATUS. L. Lat. In old English law. A deputy. *Brownl.* part 2, 331.

DEPUTE. [L. Lat. *deputare*, q. v.] To appoint or designate for a particular pur-

pose. Now applied to persons only, but anciently to places. See *Deputare*, *Deputy*.

DEPUTY. [Fr. *deputé*; L. Lat. *deputatus*.] A person appointed, designated or deputed to act for another.* One who exercises an office, &c., in another's right, having no interest therein, but doing all things in his principal's name, and for whose misconduct the principal is answerable. *Termes de la Ley.* *Tomlins.*

Deputy was anciently used in the sense of *assignee*. Thus, an administrator was called the ordinary's *deputy*. See *Administrator*. So, the assignees of an estate were sometimes termed *deputies*. Assignee is said in the old books to include *deputy*, as being the more comprehensive term. Thus a man who had power to make assigns might always make deputies. *Termes de la Ley.* The distinction was at the same time taken, that assignee signified a person who had an estate or interest in the office itself, and acted in his own name and right, whereas a *deputy* always acted in the name and right of another. *Id.* *Perkins*, c. 1, § 100. *Cowell.* The distinction made in Scotch law, is that the principal is liable for the acts of his deputy, but the grantor is not liable for his assignee. *Bell's Dict.*

DERAIGN, *Dereyn*, *Dereine*. [L. Lat. *derationare*, *dirationare*, *disrationare*; L. Fr. *dereiner*, *derener*, *disreigner*, *desrener*, contr. for *deraisner* or *deraisonner*. *Spelman*.] In old English law. To prove. To "deraign the warranty paramount." *Stat.* 31 Hen. VIII. c. 1. *Cowell.* See *Glanv.* lib. 2, c. 3. *Id.* c. 6, 20. 1 *Reeves' Hist.* 123. *Spelman*, voc. *Dirationare*.

To disprove or refute the assertion of an adverse party. *Spelman* makes this to be the proper meaning, relying in particular upon the etymology of *disrationare*, (from *dis*, contrary, and *rationari*, to reason.) See more under *Disrationare*.

To deny or refuse. "He cannot *deraign* battel." *Dyer*, 137. See *Barringt. Obs.* *Stat.* 328. And see *Deresner*.

To put out of place or order; to displace or disarrange; to turn one out of his order; to degrade. Some of the old books give the word this sense, deriving it either from the Fr. *disarrayer*, to confound, or *derayer*, *desranger*, to derange or displace. *Termes de la Ley.* *Cowell.* *Co. Litt.* 136. *Perkins*, ch. 1, s. 3, G. This derivation, however, is not approved by *Spelman*.

DERATIONARE. L. Lat. To deraign. See *Deraign*, *Dirationare*.

DERB'. An abbreviation of *Derbia*, Derbyshire. 1 *Inst. Cler.* 28.

DERCHIEF, *Derechief*, *Derichefs*. L. Fr. Moreover; again; repetition. *Kelham*.

DERECHO. Span. [from L. Lat. *derictum*, q. v.] In Spanish law. Law or right. *White's New Recop.* b. 4, tit. 4. *Derecho comun*; common law. The civil law is so called. *Id.* b. 2, tit. 13, c. 1, § 5.

A right. *Derechos*; rights. *Id.* b. 2, tit. 2, c. 11, § 5.

DERELICT. [Lat. *derelictus*, *derelictum*.] Left, forsaken; as land left dry by the retiring of the sea. 1 *Crabb's Real Prop.* 109. *Dyer*, 326 b.

Abandoned, cast or thrown away; as goods wilfully cast away by the owner on land, or thrown overboard at sea. *Inst.* 2. 1. 46. *Bract.* fol. 8. 2 *Reeves' Hist.* 9. 2 *Bl. Com.* 9. *Pro derelicto habetur quod dominus ea mente abjecerit, ut id in numero rerum suarum esse nolit; ideoque statim dominus ejus esse desinit.* That is regarded as, or held for derelict, which the owner has cast away with the intention of never again considering as his property; and therefore he immediately ceases to be its owner. *Inst. ub. sup.* Goods are "*derelict* which have been voluntarily abandoned and given up as worthless, the mind of the owner being alive to the circumstances at the time." *Tindal, C. J.* 1 *C. B.* 112. *Broom's Max.* [261.] See *Derelictum*.

Deserted or abandoned; as a vessel voluntarily deserted at sea. 2 *Kent's Com.* 457. 3 *Id.* 245. Property is *derelict*, in the maritime sense of the word, when it is abandoned without hope of recovery, or without an intention of returning. 1 *Galison's R.* 133. 1 *Mason's R.* 373, 374. 1 *Sumner's R.* 207, 336, 400. *Ware's R.* 43. 2 *Kent's Com.* 357, note. 3 *Id.* 246, note.

DERELICTION. [Lat. *derelictio*.] The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of *alluvion*, (q. v.) 2 *Roll. Abr.* 170. *Dyer*, 326 b. 2 *Bl. Com.* 262. 1 *Steph. Com.* 419.

The abandonment of property. 2 *Bl. Com.* 9.

DERELICTUM. Lat. [from *derelinquere*, to leave or abandon.] Derelict; wilfully abandoned or thrown away. *Inst.* 2. 1. 46. *Bract.* fol. 8. That which is without an owner, or which is not in the possession of any one. *Calv. Lex.*

DERENER, *Dereigner*, *Dereyner*, *De-*

raigner, *Dereiner*, *Deraigner*. L. Fr. To prove; to clear one's self; to *deraign*. *Kelham*.

DERESNER. Norm. To deny; to refuse. *Barringt. Obs. Stat.* 328, note [c]. See *Deraign*.

DERITTUM, *Derictum*, *Directum*, *Dricum*. L. Lat. [Fr. *droit*, *droict*.] Right. *Spelman*. See *Droit*, *Directum*, *Right*.

Derivativa potestas non potest esse major primitiva. A derivative power cannot be greater than the primitive or original. *Noy's Max.* 4, max. 9. A derived power cannot be greater than that from which it is derived. *Finch's Law*, b. 1, ch. 3, p. 11.

DERIVATIVE (or SECONDARY) CONVEYANCES. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 3 *Bl. Com.* 324. They are releases, confirmations, surrenders, assignments, and defeasances. *Id.*

DEROBARE. L. Lat. [from Fr. *desrober*, *disrober*.] In old European law. To steal; to pilfer. *Spelman*.

DEROGARE. Lat. [from *de*, from, and *rogare*, to pass a law.] In the civil and old English law. To derogate or diminish; to take from or impair the authority, validity or effect of a law or contract; to repeal some clause of an old law by a new one. *Derogatur legi cum pars detrahitur*; a law is derogated from, when a part of it is taken away. *Dig.* 50. 16. 102. *Hoc multum derogat chartæ et ipsius fidei*; this derogates or takes greatly from the charter and the credit to be given it. *Bract.* fol. 398. *Quod multum cartæ deroget et ejus fidei*. *Fleta*, lib. 6, c. 34, § 1. See *Rogare*, *Abrogare*.

DEROGATION. [Lat. *derogatio*, from *derogare*, q. v.] Diminution or partial abrogation; the taking from or impairing the authority or effect of a law or contract.

DES. L. Fr. From. *Kelham*.

DESACCORDAUNT. L. Fr. Different; varying from. *Kelham*.

DESADUNQUES. L. Fr. From that time. **Kelham*.

DESAVOWER. L. Fr. To disclaim or disavow. *Kelham*.

DESBLEMY. L. Fr. Unblemished. *Britt.* c. 68.

DESCEITZ, *Desceninct*, *Desoynt*, *Desceyntz*. L. Fr. Ungirded. *Kelham*.

DESCEND. [Lat. *descendere*; L. Fr. *de-*

scender.] To pass immediately from one person to another by the operation of law, as to an heir on the death of his ancestor.* When an estate is said to have *descended* from A. to B. the natural and obvious meaning of the word is that it is an *immediate* descent from A. to B. Story, J. 3 *Peters' R.* 58, 91.

Strictly and literally, to pass from the ancestor to the heir in the *descending* line; to pass downwards. It is constantly applied, however, to transmission in the *ascending* line. See *Descent*.

DESCENDANT. [Lat. *descendens*.] One who descends or is descended from another; a relative in the descending line; the opposite of *ascendant*, (q. v.)

Descendants is a good term of description in a will, and includes all who proceed from the body of the person named; as grandchildren, and great grandchildren. *Ambl.* 397. 2 *Vern.* 108, note 3. 2 *Hilliard's Real Prop.* 542.

DESCENDER. L. Fr. To descend. Sometimes used as a substantive. See *Formedon in the descender*.

DESCENT, Discent. [Lat. *descensus*; Fr. *discent*.] The title by which a man, on the death of his ancestor, acquires his estate by right of representation, as his heir at law. 2 *Bl. Com.* 201. *Co. Litt.* 13 b. 3 *Cru. Dig.* 362. 4 *Kent's Com.* 374. —Succession by law to an estate in lands. *Hallifax, Anal.* b. 2, c. 9, num. 2, 4. —Hereditary transmission or succession. *Hale's Hist. Com. Law*, 291, ch. xi. —Discent is when land, &c., after the death of the ancestor, is cast by course of law upon the heir. *Co. Litt.* 237 b. 2 *Crabb's Real Prop.* 1012, § 2390. The passage or transmission of an estate from the ancestor to the heir, usually in the *descending* line.* —The title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue. 1 *Steph. Com.* 357, note. This last is the new definition adopted by the English statute 3 & 4 Will. IV. c. 106. See *Ancestor, Heir, Inheritance*.

* * *Descent*, as applied to the transmission of estates, is a term wholly derived from the feudal law, in which, after feuds or fiefs became hereditary, it was an established maxim that they should always be transmitted *downwards* from father to son, and so lineally, while heirs continued, and never in the opposite direction. *Feud.*

Lib. 2, tit. 50. *Id.* 4, tit. 84. *Esprit des Lois*, liv. 31, c. 33. *Ersk. Inst.* b. 3, tit. 8. 2 *Bl. Com.* 211. Hence, doubtless, the adoption of the word *descent* in its full, proper, and peculiar sense of passage *downwards*, as expressive of this doctrine, in preference to the Roman term *succession*, (*successio*), which had no such exclusive meaning. *Esprit des Lois*, *ub. sup.* See *Succession*. The feudal law of descent was obviously founded on principles peculiar to the system, but it had also a quality which seems to have aided its reception and establishment, especially in England, namely, its seeming conformity to the order of *nature*. Hence the observation of Glanville, that an inheritance naturally descends, never naturally ascends; (*hæreditas naturaliter descendit, nunquam naturaliter ascendit*). *Glanv.* lib. 7, c. 1. Hence, also, the employment by Bracton of the very expressive figure of a heavy body falling *downwards*, to illustrate the old English doctrine of descent, as denoting the natural course of succession. *Descendit itaque jus*, quasi ponderosum quid cadens deorsum, *recta linea vel transversali, et nunquam re-ascendit ea viâ qua descendit*; the right therefore descends like some heavy body falling downwards, in the right or transverse line, and never re-ascends the same way it descends. *Bract.* fol. 62 b. See *Fleta*, lib. 6, c. 1, § 4. The feudal doctrine of descent was, however, adopted in England with a material qualification confining it to *lineal* succession. Collaterally, the inheritance was allowed to ascend. *A latere tamen ascendit*. *Bract.* *ub. sup.*

The ancient rule, thus modified—that inheritances shall lineally descend, but shall never lineally ascend—continued to be a leading canon of descent in English law almost down to the present time. It was abolished by statute 3 & 4 Will. IV. c. 106, which declares that “every lineal ancestor shall be capable of being heir to any of his issue.” 1 *Steph. Com.* 378. In American law, the ascent of estates has long been authorized. 4 *Kent's Com.* 392, 393, *et seq.* But, notwithstanding this material departure from the primitive or feudal law on this subject, the characteristic language of that law has been in a marked degree retained; the primitive terms *descent* and *descend* being constantly used even to denote transmission in an *upward* direction. Thus, an inheritance is said to “descend to an ancestor,” as “to a fa-

ther." 1 *Steph. Com.* 376. 2 *Hilliard's Real Prop.* c. 77. The language of the ancient law of England, even in Bracton's time, was much more precise and discriminative; a right or estate being said to *ascend* or *descend* according as it passed *upwards* or *downwards* in the lines of consanguinity. *Nunquam re-ascendit. Bract. fol. 62 b. A latere ascendit. Id. ibid.* So, in the Scotch law, it is said "the succession *mounts upward* to the father." *Ersk. Inst. b. 3, tit. 8, § 9.* But notwithstanding the example of very high American authority, (4 *Kent's Com.* 393, 397,) the terms *ascend* and *ascend* have never taken firm root even in American law; nor is the derivative *ascendant* employed with the frequency which its peculiar propriety would seem to suggest. See *Ascendant*.

Descent was denoted, in the Roman law, by the term *successio*, which is also used by Bracton, and from which has been derived the *succession* of the Scotch and French jurisprudence. See *Successio*, *Succession*.

DESCHALLENGES. L. Fr. Unchallenged. *Britt. c. 87.*

DESCHEIEZ. L. Fr. Fallen down; gone to ruin; gone to decay. *Kelham.*

DESCHUER, *Descheur*. L. Fr. To fall out, to happen; to fall down. *L. Fr. Dict. Descheu de sa plaint*; falls from his plaint; that is, fails in it, or loses the benefit of it. *Kelham.*

DESCLOR, *Desclear*. L. Fr. Disclosed; set forth. *Kelham.*

DESCLOS. L. Fr. Not enclosed. *Kelham.*

DESCOUNSEILE, *Descounseille*. L. Fr. Discounselled; not filled up; unprovided. *Britt. c. 92. Kelham.* A term applied to a church or benefice.

DESCOULPE. L. Fr. Excused; exculpated. *Kelham.*

DESCOVENABLE. L. Fr. Unfitting, unlawful; not juridical. *Britt. c. 52. Kelham.*

DESCOVERT. L. Fr. Opened; uncovered. *Kelham.*

DESCRIPTIO PERSONÆ. L. Lat. Description of the person. 3 *Day's R.* 470. 2 *Ld. Raym.* 1437. 2 *Stra.* 729. 1 *Hilliard's Real Prop.* 605. 2 *Selden's R.* 168.

DESCYNNERS. L. Fr. Deciners; pledges in a decennary. *Britt. c. 12.*

DESERE EN AVANT. L. Fr. From henceforth. *Stat. of Tithes*, 18 *Edw. III.* 2 *Inst.* 639.

DESERT. [Lat. *deserere*.] To leave or quit with an intention not to return; to forsake utterly; to abandon.

DESERTION. Abandonment; the act of leaving or forsaking a service, duty or person. The act of forsaking, deserting or abandoning a person with whom one is legally bound to live, or for whom one is legally bound to provide; as a wife or husband. See *Malicious abandonment*, *Malicious desertion*.

DESERVIRE. L. Lat. To serve; as a feudal tenant did his lord. 2 *Bl. Com.* 284.

DESES. L. Fr. Decease. *Kelham.*

DESGARNYS. L. Fr. Unwarned. *Britt. c. 4.*

Unfurnished; unprovided. *Id. c. 123.*

DESHONRA. Span. In Spanish law. Dishonor; injury; slander. *Las Partidas*, part 7, tit. 9, l. 1, 6.

DESICUT. L. Lat. Whereas, (in the sense of opposition). *Dicit quod habet in tali villa medietatem unius carucate terre; desicut non fuit dotata nisi de tertia parte*; says that she has in such a town a moiety of one carue of land, whereas she was not endowed but of a third part. *Bract. fol. 314 b, 227 b.*

Inasmuch as. *Bract. fol. 335 b, 379, 390, 403, 436.*

DESIGN. In the law of evidence. Purpose or intention, combined with plan, or implying a plan in the mind. *Burr. Circ. Evid.* 331.

DESIGNARE. Lat. To mark or point out; to designate, to assign or appoint. *Calv. Lex. Jur.*

DESIGNATIO. Lat. [from *designare*, q. v.] Designation; specification. *Designatio personæ*; designation of the person. 2 *Powell on Dev.* 357, 358. 1 *Hilliard's Real Prop.* 499. Applied to a word of purchase, as distinguished from a word of limitation. 2 *Stra.* 802, 804.

Designatio unius personæ est exclusio alterius. The specification of one person is [or implies] the exclusion of another. *Co. Litt.* 210. "The law shall never seek out a person, when the parties themselves have appointed one." *Id. ibid.* See *Expressio unius est exclusio alterius*.

"DESIRE AND REQUEST," in a will, amount to a direction or command. *Ambl.* 5. 2 *Sch. & Lef.* 189. 17 *Vesey, jun.* 225.

"DESIRE," in a will, held to raise a trust or bequest by implication. 1 *Atk.* 469.

5 *Vesey*, 501. *Amb'l.* 520, note (2). But see 20 *Penn. St. R.* 268, where it was held that words in a will, expressive of desire, recommendation and confidence, are not words of technical but of common parlance, and are not, *primâ facie*, sufficient to convert a devise or bequest into a trust.

DES KE, (QUE). L. Fr. From which time; since. *Kelham.* *Des kes a ore*; from which time until now; so far. *Id.*

DESMAINENTANT. L. Fr. From henceforth; from the present moment; even now; forthwith. *L. Fr. Dict. Kelham.*

DESMARIE, *Desmary*, *Desmarietz*. L. Fr. Unmarried. *Kelham.* *Marie ou desmary*; married or unmarried. *Yearb. M.* 8 Edw. III. 47.

DESMEMORIADOS. Span. In Spanish law. Persons deprived of memory. *White's New Recop.* b. 1, tit. 2, c. 1, § 4.

DESORE, *Deshors*. L. Fr. From now; from this time. *Kelham.* *Desore en avant*, *desorenavant*, *desorenaunt*; from this time forward; from henceforth. *Id. Stat. Westm.* 1, c. 34. 1 *Rep. in Ch.* Appendix.

DESORMES, *Desorèmes*, *Desormais*. L. Fr. From henceforth; hereafter. *Stat. Westm.* 1, cc. 3, 7, 11. *Nul comon plee ne soit desormes tenuis*, &c.; no common plea shall hereafter be held, &c. *Artic. sup. Chart.* c. 4. *Parnes gard de ceo desormes*; take care of this in future. *Yearb. M.* 8 Edw. III. 29.

DESOUBS, *Desoubes*. L. Fr. Under. *Desoubes le seale*; under the seal. *Artic. sup. Chart.* c. 1.

DESOUS, *Desus*, *Desouz*, *Dessouz*, *Desoz*. L. Fr. Under, underneath; hereafter. *Kelham.* *Britt.* c. 55.

DESOUTH. L. Fr. Under; below. *Desouth le petit seale*; under the petty (or privy) seal. *Artic. sup. Chart.* c. 6. *Desouth nosmes*; undernamed. *Stat. Westm.* 1, c. 39. *Desouth serure*; under lock. *Yearb. M.* 5 Edw. III. 34.

DESPARAGER. L. Fr. To disparage. *Britt.* c. 67. See *Disparager*.

DESPEREE. L. Fr. Unforeseen. *Kelham.*

DESPERATE. [Lat. *desperatus*, from *desperare*, to despair.] Hopeless; without hope of recovery. Used in inventories of property, as a designation of debts or claims considered worthless.

DESPITE, *Despyte*, *Despight*. L. Fr. and Eng. Contempt. *Despitz*; contempt. *Kelham.* See *Departure*, &c.

DESPITOUSEMENT. L. Fr. Despitefully; contemptuously. *Kelham.*

DESPITUS. L. Lat. Contempt. See *Despite*.

A contemptible, feeble or decrepid person. *Fleta*, lib. 4, c. 5, § 4.

DESPONSARE. L. Lat. In old English law. To marry. *Fleta*, lib. 6, c. 39, § 3.

DESPOSORIO. Span. In Spanish law. Espousals; mutual promises of future marriage. *White's New Recop.* b. 1, tit. 6, c. 1, § 1.

DESPUNI, *Despunies*. L. Fr. Unpunished. *Britt.* c. 4.

DESRENABLE. L. Fr. Unreasonable. *Britt.* c. 121.

DESTREINDRE, *Destreyndre*. L. Fr. To distrain. *Britt.* c. 20, 26.

DESTRER, *Destrier*, *Dextrier*. L. Fr. [L. Lat. *dextrarius*.] In old records. A war-horse. *Spelman.*

DESTRESSE. L. Fr. Distress; process to compel an appearance. *Britt.* c. 26. Compulsion. *Kelham.*

The district or bailiwick of a sheriff. *Britt.* c. 120. See *District*.

DESTRUCTION. [Lat. *destructio*; L. Fr. *destruction*.] A term used in old English law, generally in connection with waste, and having, according to some, the same meaning. 1 *Reeves' Hist. Eng. Law*, 385. 3 *Bl. Com.* 223. See *Waste*. Britton, however, makes a distinction between waste of woods and destruction of houses; (*wast d' boys*, *destruccio' de tenem'tz*). *Britt.* c. 66. *Stat. Marlbr.* c. 17.

DESTRUERE. Lat. In old English law. To destroy. *Nullus liber homo capiatur—aut aliquo modo destruat*; no freeman shall be taken—or in any manner destroyed. *Magna Charta*, c. 29. Lord Coke construes *destroyed* to mean, forejudged of life or limb, disherited or put to torture or death. 2 *Inst.* 48. Every oppression against law by color of any usurped authority is a kind of destruction. *Id. ibid.*

DESTURBER. L. Fr. To disturb. *Desturbe*; disturbed. *Britt.* c. 32.

DESUETUDE. [from Lat. *desuetudo*, from *desuescere*, to disuse.] Disuse; cessation or discontinuance of use.

DESUM, *Desuz*, *Desuis*, *Desuys*. L. Fr. Under; below. *Comprises desus le noeme de peison*; comprised under the name of mast. *Britt.* c. 55. See *Desous*.

Upon; above. *Kelham.* L. Fr. Dict. Before. *Britt.* c. 89.

DESVESTER, *Devester*. L. Fr. To divest; to unclothe. L. Fr. Dict. See *Devest*.

DET. L. Fr. Debt; an action of debt. *Dyer*, 26 b, *et passim*. See *Debt*.

DETACHIARE. L. Lat. To seize or take into custody another's goods or person. This word is given by Cowell, but seems a corruption of *attachiare*, (q. v.)

DETAINER. [Lat. *detentio*; L. Fr. *detenue*.] Detainment or detention. The keeping another out of possession of lands or tenements. 3 *Bl. Com.* 179. The withholding possession of another's goods. 3 *Steph. Com.* 524.

In English practice. A process which lies against persons in custody. 1 *Arch. Pr.* 80. *Arch. N. Pract.* 517.

DETENER. L. Fr. To detain. *Detenour*; a detainer; one who detains. *Britt.* c. 27.

DETENTIO. Lat. In old English law. Detention or detainment, as distinguished from, or in connection with *captio*, (taking). *Bract.* fol. 156 b. *Injusta captio et injusta detentio*. *Fleta*, lib. 1, c. 42, § 1. *Detenitor*; a detainer. *Bract.* *ub. sup.*

In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. 1 *Mackeld. Civ. Law*, 236, § 229. It forms the substance of possession in all its varieties. *Id. ibid.*

DETENUE. L. Fr. Detention. *En la prise et en la detenue*; in the taking and in the detention. *Britt.* c. 27. Hence the name of the action of *detinue*, (q. v.)

DETERMINABLE. That which may cease or determine upon the happening of a certain contingency. 2 *Bl. Com.* 121. See *Determine*.

DETERMINATION. [L. Lat. *determinatio*.] A ceasing, termination, or coming to an end (*terminus*).^{*} Distinguished from *expiration*, as depending on contingency. See *Determine*. "Tenant for life, or his representatives shall not be prejudiced by any sudden *determination* of his estate, because such a *determination* is contingent and uncertain." 2 *Bl. Com.* 122. Applied to estates at will. 2 *Crabb's Real Prop.* 407, *et seq.*

DETERMINE. [L. Lat. *determinare*, from *terminus*, an end or limit.] To cease, terminate, or come to an end, on the happening of a certain contingency.^{*} "There are some estates for life which may *determine* upon future contingencies, before

the life for which they are created *expires*. As, if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely *determined* and gone." 2 *Bl. Com.* 121. This illustrates the distinction between *determination* and *expiration*.

To cause to cease or terminate; to put an end to, or bring to an end.^{*} Where a tenant holds his estate at the will of his lessor, the latter may *determine* his will and put him out whenever he pleases. 2 *Bl. Com.* 145. 2 *Crabb's Real Prop.* 407, *et seq.* If a person *determine* his estate by his own act, he shall not have emblements. *Co. Litt.* 55 b.

DETESTARI. Lat. In the civil law. To summon or give notice to one in his absence, (*absenti denuntiare*). *Dig.* 50. 16. 39. 2.

DETESTATIO. Lat. In the civil law. A summoning made, or notice given in the presence of witnesses, (*denuntiatio facta cum testatione*). *Dig.* 50. 16. 40.

DETINET. Lat. (He detains.) In pleading and practice. A term anciently used (as the English equivalent still is,) in declaring in certain actions of debt, as against executors and administrators, &c., and which has given name to the mode of declaring in such cases; the declaration being said to be "in the *detinet*." *Reg. Orig.* 140. 3 *Bl. Com.* 155. See *Debet et detinet*.

A term applied to the action of replevin where it is founded on the wrongful *detention* of a thing. 2 *Burr. Pr.* 1. 3 *Hill's (N. Y.) R.* 282. 4 *Id.* 603. 6 *Id.* 613.

DETINUE. L. Fr. and Eng. [L. Lat. *detentio*, or *breve vel actio de detentione*.] In practice. A species of personal action *ex delicto*, which lies to recover the specific possession of a personal chattel wrongfully *detained* from another, where the original taking was lawful, (as where the possession was acquired by delivery, finding, &c.) or its value, and damages for its detention. 3 *Bl. Com.* 151. *F. N. B.* 138. *Co. Litt.* 286 b. 1 *Tidd's Pr.* 5. *Browne on Actions*, 358. 3 *Steph. Com.* 461. This was anciently a common remedy for the recovery of charters, deeds, and other title papers; but is now in a great measure superseded in English practice by the action of

trover. *Co. Litt.* 286 b. 3 *Bl. Com.* 152. In some of the United States, it has been abolished, and its place supplied by replevin. 2 *N. Y. Rev. St.* [553.] 456, § 15. 2 *Kent's Com.* 241, note.

DETRACTARE. L. Lat. In old English law. To draw, or drag; to draw along; to draw or drag a convict to the gallows or stake. *Detractentur et suspendentur*; they shall be drawn and hanged. *Fleta*, lib. 1, c. 37, § 4. *Detractari et comburi*; to be drawn and burned. *Id.* § 2.

DETRIE. L. Fr. Tries; tried. *Britt.* c. 90. *Kelham.*

DETT, Dette, Det. L. Fr. Debt; a debt. *Artic. sup. Chart.* c. 12. *De dette.* *Britt.* c. 28. *Distreine pur dette dont il n'est dettour*; distrained for a debt of which he is not a debtor, [which he does not owe]. *Stat. Westm.* 1, c. 23. *Art. sup. Chart.* c. 3.

An action of debt. 1 *And.* 4.

DETTEE. L. Fr. A creditor. *Dyer*, 83.

DETTOUR. L. Fr. A debtor. *Britt.* c. 28. See *Dett.*

DEUE, Deve. L. Fr. Due. *Rot. Parl.* 4 Hen. IV. cited 1 *Rep. in Ch. Appendix.*

DEUNX, (pl. of **DEUNCES**). Lat. In the Roman law. A division of the *as*, containing eleven *uncia* or duodecimal parts; the proportion of eleven-twelfths. 2 *Bl. Com.* 462, note. *Tayl. Civ. Law*, 492. See *As*.

DEVADIARI. L. Lat. [from *de*, priv. and *vadiare*, to pledge.] In old English law. To be discharged from giving gage (*vadium*) or pledge. *Bract. fol.* 103. This seems to be the proper meaning; *devadiatus* in Domesday signifying, without sureties or pledges. *Cowell.* Although it is also used in Bracton in the opposite sense,—to be bound by pledges, to have pledges taken. *Bract. fol.* 217.

DEVALER. L. Fr. To go downwards; to bring down. *Kelham.*

DEVANT, Devaunt, Devent. L. Fr. Before. *Devant le roy en son place*; before the king in his place, (i. e. in his own court). *Reg. Orig.* 17 b, nota. *Devaunt nos justices*; before our justices. *Britt.* c. 45.

DEVANT SES HEURES. L. Fr. Before this time; heretofore. *Yearb. M.* 11 Hen. VI. 28.

DEVASTATION. [Lat. *devastatio*, from *devastare*, to waste.] The waste of the

property of a deceased person by his executor or administrator. 2 *Bl. Com.* 508. Sometimes called *devastavit*, (q. v.)

DEVASTAVERUNT. L. Lat. (pl. of *devastavit*, q. v.) They have wasted. A term applied, in old English law, to waste by executors and administrators, and to the process issued against them therefor. *Cowell.* See *Devastavit*.

DEVASTAVIT. [L. Lat. from *devastare*, to waste.] He has wasted. Waste by an executor or administrator; a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the trust reposed in him.* *Shep. Touch.* 485. 2 *Williams on Executors*, 1529. 2 *Greenl. on Evid.* § 347 a.

In practice. A return made by a sheriff, (in addition to the return of *nulla bona*,) to a writ of execution against an executor or administrator, signifying that *he has wasted* the goods of the testator or intestate; upon which the plaintiff may have execution immediately against the defendant personally, by *feri facias de bonis propriis*. 2 *Tidd's Pr.* 1018, 1025. *Shep. Touch.* 486. 5 *Co.* 32. 3 *Salk.* 125.

An entry or suggestion, on record, of waste by an executor or administrator, made on the part of a plaintiff, as the foundation of a new writ, or of an action of debt.* 2 *Tidd's Pr.* 1113, 1114. 5 *Co.* 32.

DEVENER, Devenir, Deveigner. L. Fr. To come; to become; to fall to. *L. Fr. Dict. Devenus*; come. *Britt.* c. 21.

DEVENERUNT. L. Lat. [from *devenire*, to come, to come to; or fall to.] In old English practice. A writ directed to the escheator, where any tenant of the king, holding *in capite*, died; and his son and heir being within age, and in the king's custody, died; commanding the escheator that by the oaths of good and lawful men he inquire what lands and tenements, by the death of the tenant *came to* (*devenerunt*) the king. *Termes de la Ley.* *Cowell.* *Dyer*, 359 b. *Com.* 616.

DEVENIO. L. Lat. [L. Fr. *deveigne*.] I become. *Devenio vester homo*; (Fr. *jeo deveigne vostre home*,) I become your man. The first words of the ancient form of doing homage. *Bract. fol.* 80. *Fleta*, lib. 3, c. 16, § 20. *Litt. sect.* 85. *Co. Litt.* 64 b. 2 *Bl. Com.* 54.

DEVENIT. L. Lat. Comes or falls. Distinguished from *descendit*. *Cro. Car.* 427, 430.

DEVER, *Deyver*. L. Fr. To owe; ought. L. Fr. Dict. *Kelham*.

DEVERS, *Dev's*. L. Fr. Against. *Devers le chief seignieur*. *Britt. c. 74. Fearb. T. 3 Edw. III. 9, 23, et passim.*

Towards. *Devers le fyn*; towards the end. *Kelham*.

DEVEST. [L. Fr. *devester, desvester*; L. Lat. *devestire, q. v.*] In old English law. To take away; to deprive of, as a possession, title, or estate; the opposite of *invest*. * *Termes de la Ley. Cowell*. See *Devestire*. Sometimes written *divest*; but *devest* has the support of the best authority. *Co. Litt. 15 a, b. Hale's Anal. sect. xxxii. See Invest*.

In modern law. To take or draw away. "The whole estate was *devested* and drawn out of the feoffees." 4 *Kent's Com.* 240. "The feoffment made by the feoffees *devested* all the estates." *Id. ibid*.

To strip or deprive. "The statute *devested* the feoffees of all the estate." *Id.* 239. See *Vest*.

DEVESTIRE. L. Lat. [from *de*, priv. and *vestire*, to cloth, from *vestis*, a garment.] In feudal law. To take away an investiture; to deprive of possession of a fee or feud. *Feud. Lib. 1, tit. 7. Calvin de Verb. Feud.*

DEVIATION. In marine insurance. A voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the specific voyage insured. *Park on Ins.* 294, ch. 17. 1 *Marshall on Ins.* 183. *Hughes on Ins.* 139, (Am. ed. 1833). 3 *Kent's Com.* 312.

A deviation is the increasing or varying the risks insured against, without necessity or reasonable cause. 1 *Phillips on Ins.* 480, (ed. 1840). A deviation is not merely going out of the direct or usual course of the voyage, but it comprehends unusual and unnecessary delay, or any other act of the assured, or his agents, which, without necessity or just cause, increases or changes the risks included in the policy. *Id.* 481. Going out of the way or stopping for any other purpose than to save life or to relieve a vessel in distress, is a deviation. 2 *Wash. C. C. R.* 80. 2 *Cranch's R.* 268. 1 *Sumner's R.* 400, 328. 3 *Kent's Com.* 312—318. *Abbott on Ship.* (Perkins' ed.) [361], 441, notes.

DEVIER, *Devyer*. L. Fr. To die. *Devie, devia, devy*; diea. *Litt. sect. 2, 4. Deviont*; (they) die. *Id.* sect. 4.

DEVISA, *Divisa*. L. Lat. A devise. See *Devise*.

DEVISABLE. Capable of being devised. 1 *Powell on Dev.* 165. 2 *Bl. Com.* 373.

DEVISARE. L. Lat. In old English law. To devise. *Devisavit*; he devised. See *Devisavit vel non*.

Devisamentum; *devisatio*; a devise. *Rast. Entr.* 486.

DEVISAVIT VEL NON. L. Lat. (Did he devise or not? Was there, in fact, a will or not? Will or not will? 2 *Rep. in Ch.* 303.) In practice. An issue directed by a court of equity to a court of law, to try the validity of a will, upon some alleged objection of fact; such as fraud, or incapacity on the part of the testator.* 1 *Powell on Dev.* 626, 628, and note. 1 *Story's Eq. Jur.* § 440. 1 *W. Bl.* 95. 1 *Rep. in Ch.* 191. 2 *Id.* 303. 3 *Jones' Law R.* 154.

DEVISE. L. Fr. In old English law. A boundary; a division line, or space separating lands. *De devises et de boundes entre voisins*; of divisions and bounds between neighbors. *Britt. c. 42. Si devises entre voisins soient arres*; if division lines or spaces between neighbors be ploughed up. *Id. ibid*.

A court. *LL. Gul. Cong.* l. 5.

DEVISE. L. Fr. and Eng. [L. Lat. *devisamentum, devisatio, devisa, or divisa*; from Fr. *deviser*; Lat. *dividere*, to divide.] A gift or disposition of lands or other real property, by a last will and testament.* 2 *Bl. Com.* 373. 4 *Kent's Com.* 501, and note. 2 *Hilliard's Real Prop.* 474.

A will of lands, or other real estate. 1 *Powell on Dev.* 7—9. 2 *Bl. Com.* 373. 4 *Kent's Com.* 501.

The Latin form of this word (*divisa*) would seem to show that the original spelling was *divise*. See *Divisa*. The word *devisisset*, however, occurs in *Domesday*. *Cowell*, voc. *Devisere*. Devise (*divisa*), is used by Glanville to signify a division or disposition of personal property. *Glanv. lib. 12, c. 20. Spelman*, voc. *Divisa*. But it is now exclusively employed to denote a disposition of real estate, as distinguished from a bequest of personal. 2 *Bl. Com.* 373. 1 *Steph. Com.* 557. A devise is said to be not a conveyance by the common law, but by custom and statute. 3 *Salk.* 197. See *United States Digest*, Devise.

To DEVISE. [L. Fr. *deviser*; L. Lat. *devisare*.] To give or dispose of lands or

hereditaments by will; to make a will of lands.* 1 *Powell on Dev.* c. 2. 2 *Bl. Com.* 373, *et seq.* In old law, to dispose of chattels by will. *Finch's Law*, b. 2, c. 15.

To frame or draw an instrument, as a conveyance or assurance, by counsel. This word is used in *Roswell's case*, (5 *Co.* 19 b,) as *advise* is in *Higginbottom's case*, which follows, (*Id. ibid.*) both being treated in some degree as synonymous. *Cro. Eliz.* 297, 298, S. C. See *Dyer*, 31 b. The phrase, "shall be reasonably devised, advised or required," continues to be used in covenants in deeds for further assurances.

DEVISEE. The person to whom lands or other real property, are devised or given by will. 1 *Powell on Dev.* c. 7.

DEVISER. L. Fr. To devise.

Some make the proper meaning of this word to be, *to speak*; others, *to will*. *Co. Litt.* 111 a. *Brande.* It is, more correctly, to divide, or distribute, from the Lat. *dividere*. *Houard's Dict.* cited 4 *Kent's Com.* 501, note.

DEVISOR. A giver of lands or real estate by will; the maker of a will of lands; a testator. 1 *Powell on Dev.* c. 5. 1 *Steph. Com.* 544.

DEVON'. An abbreviation of *Devonia*, Devonshire. 1 *Instr. Cler.* 28.

DEVORCE, Devors. L. Fr. Divorce; a, or the divorce. *Britt.* c. 51, 107.

DEVYER. L. Fr. To die. *Devya*; died. *Yearb. T. 1 Edw. II.* 11.

DEX. Norm. God. *Kelham.*

EXTANS. Lat. In the Roman law. A division of the *as*, consisting of ten *uncia*; ten-twelfths, or five-sixths. 2 *Bl. Com.* 462, note (m). *Taylor's Civ. Law*, 492.

DEY. L. Fr. Ought. *Dey apper*; ought to appear. *Fet Assaver*, § 30.

DEYNS AGE. L. Fr. Within age. *Dyer*, 55, (Fr. ed.)

DEYVER, Deiver. L. Fr. To owe; ought. *Kelham.* *Deyvent*; ought. *Id.*

DEZ, Dezz. L. Fr. Ten. *Kelham.*

DEZINER, Dezyner. L. Fr. A deciner; one of a decennary. *Chiefe dezyner del hundred de F.* *Yearb. H. 6 Edw. III.* 27. *Les deziners.* P. 7 *Edw. III.* 15.

DI ET FL. L. Lat. In old writs. An abbreviation of *dilecto et fideli*; (to his beloved and faithful). *Reg. Orig.* 17, *et passim.*

DIACONUS. Lat. Deacon; a deacon. *Cod.* 1. 3. 6, 20. See *Spelman* for a full explanation.

ΔΙΑΔΟΧΗ, Διαδοχη. Gr. [from *διαδεχομαι*, to succeed.] In the civil law. Succession. *Περὶ διαδοχῆς τῶν κατέβητων*; concerning the succession of descendants. *Nov.* 118, c. 1.

DIÆTA. Lat. In the civil law. A parlour; an apartment in a house. *Cod.* 4. 65. 3.

DIALOGUS DE SCACCARIO. L. Lat. Dialogue of, or about the Exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham. *Crabb's Hist. Eng. Law*, 71. See *Blackst. Law Tr.* 94. Mr. Madox thinks it was composed in the reign of Henry II.

ΔΙΑΘΗΚΗ, Διαθηκη. Gr. [from *διατίθημι*, to dispose.] In the civil law. A will or testament. *Dig. proœm.* § 6. *Dig.* 26. 3. *Nov.* 119, c. 9.

ΔΙΑΤΑΞΙΣ, Διαταξις. Gr. [from *διατάσσω*, to ordain.] In the civil law. A constitution, or ordinance. *Nov.* 66. The Novels (Novellæ) of Justinian and his successors are designated by this word throughout.

DIATIM. L. Lat. [from *dies*, day.] In old records. Daily, every day; from day to day. *Spelman.*

DIBENDRE. L. Fr. Friday. *Kelham.*

DICA. L. Lat. In old English law. A tally for accounts, by number of cuts, (*taillees*), marks or notches. *Cowell. Lib. Rub. Scacc.* cited *ibid.* See *Tallia*, Tally.

DICEL. L. Fr. Of this same. *Kelham.*

DICERE. Lat. In old English law. To say, to speak; to deliver or pronounce, as a verdict. *Dicere veritatem*, (*verum*;) to say or speak the truth. *Bract.* fol. 292. *Et cum xxiiii veredictum suum dixerint*; and when the twenty-four shall have pronounced their verdict. *Id. ibid.* See *Dictum*.

DICT. L. Fr. A word. *Kelham.*

DICTIO. L. Lat. [from *dicere*, q. v.] In old English law. A word; an expression. *Si aliqua dictio duos contineat intellectus*; if any word contain two meanings. *Bract.* fol. 34. *Fleta*, lib. 5, c. 41, § 4.

DICTUM, (pl. DICTA). L. Lat. [from *dicere*, to say.] A saying or remark; an opinion expressed by a judge in deciding a cause or question, either aside from the point to be decided, and hence said to be *extra-judicial*, or *obiter*, (by the way); or

given without deliberation, as a hasty opinion at *nisi prius*.* Lord Mansfield, in *Saunderson v. Rowles*, observed upon an opinion of Lord Holt, cited on the argument of the cause, "that is an *obiter* saying only, and not a resolution or determination of the court, or a direct, solemn opinion of the great judge from whom it dropped. This *dictum* of Lord Chief Justice Holt's is no formed decisive resolution, no adjudication, no professed deliberate determination." 4 *Burr.* 2064, 2068. These extra-judicial *dicta* are not usually considered as binding upon courts. 2 *Powell on Dev.* (by Jarman,) 200. 2 *Kent's Com.* 177, 335. In some cases, however, they are treated with great consideration. Lord Ellenborough, 10 *East*, 189. See the observations of Lord Brougham on *nisi prius dicta*. 2 *Bell's Appeal Cases*, 21, 22. And see 16 *Howard's R.* 275, 287.

An assertion or statement. *Gratis dictum*; a gratuitous or voluntary representation; one which a party is not bound to make. 2 *Kent's Com.* 486. *Simplex dictum*; a mere assertion; an assertion without proof. *Bract.* fol. 320.

In old practice. The verdict of a jury. Literally, "a saying." Originally entered on record thus—*Dictum super sacramentum suum*; say upon their oath. *Plac. Cor. Just. Itin.* in *Com. Linc. Ann.* 56 Hen. III. *Rot.* 29, in dora. *Si juratores in dicto suo perseverent*; if the jurors persist in their verdict. *Bract.* fol. 201. *Si velint emendare dictum suum*; if they wish to amend their verdict. *Id.* fol. 296. See *Id.* fol. 292. *Fleta*, lib. 5, c. 22, § 10. *Dictum* is one of the component parts of the word verdict, (*veredictum*, q. v.)

DICTUM DE KENILWORTH. L. Lat. The edict or declaration of Kenilworth. An edict or award between king Henry III. and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth castle in Warwickshire in the 51st year of his reign, A. D. 1266; containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. *Blount.* 2 *Reeves' Hist. Eng. Law*, 62. *Hale's Hist. Com. Law*, 10, and note.

DIEI DICTIO. Lat. In the Roman law. The notice given by a magistrate that he intended to impeach a certain citizen, (whom he mentioned by name,) of a certain crime, before the people, on a certain

day. *Hallifaz, Anal.* b. 3, ch. 13, num. 40.

DIEM CLAUSIT EXTREMUM. L. Lat. (He closed his last day; he died.) In English practice. A writ founded on the statute of Marlbridge, (c. 16,) anciently issued out of chancery to the escheator of the county, after the death of any of the king's tenants *in capite*, to inquire by a jury of what lands he died seised, and of what value, and who was the next heir to him, and to take the lands into the king's hand. *Reg. Orig.* 291 b. *F. N. B.* 251, K. 2 *Reeves' Hist.* 327. 3 *Id.* 55.

A writ awarded out of the exchequer after the death of a crown debtor. *Termes de la Ley.* This writ is still in use in England, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts and lands he had at the time of his decease, and to take and seize them into the crown's hands. 4 *Steph. Com.* 47, 48.

DIEMANE. L. Fr. Sunday. *Kelham.*

DIES. Lat. In the civil law. Day; a day; the day. *More Romano*, dies à media nocte incipit, et sequentis noctis media parte finitur; itaque quicquid in his viginti quatuor horis, id est, duabus dimidiatis noctibus et luce mediâ, actum est, perinde est, quasi quavis hora lucis actum esset. According to the Roman custom, a day begins at midnight, and ends in the middle of the following night; whatever, therefore, is done in these twenty-four hours, that is, in two half-nights and the daylight between, is the same as though it were done at any hour of the daylight. *Dig.* 3. 12. 8.

Day; the day or date of an instrument. *In omnibus obligationibus, in quibus dies non ponitur, præsentis die debetur.* In all obligations in which a date is not put, the debt or obligation commences on the present day, that is, immediately on execution. *Dig.* 50. 17. 14. *Sine die et consule*; without date and consul's name. *Id.* 20. 1. 34. 1.

DIES. Lat. [Fr. jour.] In old English law. Day, a day; days. *Clara dies*; day-light. *Bract.* fol. 137 b. *Dies Solis*, (L. Fr. *Dimaigne*,) Sunday; *Dies Luna*, (L. Fr. *Dilune*,) Monday; *Dies Martis*, (Fr. *Dimar*,) Tuesday; *Dies Mercurii*, (Fr. *Dimecre*,) Wednesday; *Dies Jovis*, (Fr. *Dijau*, *Dijou*,) Thursday; *Dies Veneris*, (Fr. *Dibendre*,) Friday; *Dies Sa-*

turni, (Fr. *Dissate*.) Saturday. *Law Lat. Dict. Kelham*.

Provisions or maintenance for a day, (*diei alimonium*). *Spelman*. *Dies de firma*; a day of farm or rent; i. e. a day's entertainment as a rent. *Domesday*, cited *ibid*. See *Firma*. The king's rents were anciently reserved in provisions, (*firmes* or *feormes*); that is, in so many days' and nights' provisions. *Cowell*. *Spelman*.

A day of appearance in court, or continuance. *Fleta*, lib. 2, c. 65, § 15. *Co. Litt.* 134 b. See *Day*.

Dies inceptus pro completo habetur. A day begun is considered as completed. *Bell's Dict. voc. Computation of time*.

DIES AMORIS. L. Lat. In old English practice. A day of favor or indulgence; supposed to be the same with the *quarto die post*, as granted by the favor of the court. *Co. Litt.* 135 a. *Crabb's Hist. Eng. Law*, 218. It seems, however, to have rather signified any day granted by the court to a party, as a matter of indulgence, or out of the usual course of proceedings, as with a view to an amicable disposition of the suit. *Bract.* fol. 358, 369. *Fleta*, lib. 6, c. 14, § 18. It might be obtained after a default, and if so obtained by a defendant without any mention of the default, it amounted to a waiver of it. *Bract. ub. sup.* 2 *Reeves' Hist.* 60.

DIES A QUO. Lat. (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem*. 1 *Mackeld. Civ. Law*, 168, § 172. See *A quo*.

DIES COMMUNES IN BANCO. L. Lat. In English practice. Common days in banc, or bench, (or, in the bench). Stated days of appearance in the courts; called also common return days. *Crabb's Hist.* 217. 2 *Reeves' Hist.* 56, 57. See *Days in bank*. According to *Fleta*, they were termed common, as being equally common to all suitors, (*pariter omnibus communes*). *Fleta*, lib. 2, c. 35.

The title of the statute 51 Hen. III. regulating the returns of writs and the continuance of proceedings in term. *Crabb's Hist.* 159. 2 *Reeves' Hist. ub. sup.*

DIES DATUS. L. Lat. In practice. A day given. A day or time of respite given by the court to a defendant in an action; an adjournment or continuance. *Bro. Abr.* Continuance. A continuance

before the count or declaration. *Hardr.* 365, 366. See *Continuance*.

Dies datus in banco; a day given in the bench (or court of Common Pleas). *Bract.* fol. 257 b, 361. A day given in bank, as distinguished from a day at *nisi prius*. *Co. Litt.* 135. See *Bank*.

Dies datus partibus; a day given to the parties to an action; an adjournment or continuance. *Crabb's Hist.* 217.

Dies datus prece partium; a day given on the prayer of the parties. *Bract.* fol. 358. *Gilb. C. Pleas*, 41. 2 *Reeves' Hist.* 60.

DIES DOMINICUS. Lat. [L. Fr. *diemane*, *dimaigne*, *dymain*.] The Lord's day; Sunday. *Cod.* 3. 12. 11. *Const. Leonis Aug.* 54.

Dies dominicus non est juridicus. Sunday is not a court day, or day for judicial proceedings, or legal purposes. *Co. Litt.* 135 a. *Noy's Max.* 2. *Wingate's Max.* 7, max. 5. *Broom's Max.* 19. The Sabbath-day is no day for law cases. *Finch's Law*, b. 1, ch. 3, num. 1. See *Cod.* 3. 12. 11. See *Sunday*.

DIES EXCRESCENS. L. Lat. In old English law. The added or increasing day in leap year. *Bract.* fol. 359, 359 b.

DIES FASTI. Lat. In the Roman law. Days on which the courts were open, and justice could be legally administered; days on which it was lawful for the prætor to pronounce (*fari*) the three words, *DO, DICO, ADDICO*. 1 *Mackeld. Civ. Law*, 24, § 35, and note. 3 *Bl. Com.* 424, note. *Calv. Lex. Jur.* Hence called *trivernal* days; answering to the *dies juridici* of the English law.

DIES FERIATI. Lat. In the civil law. Holidays. *Dig.* 2. 12. 2, 9.

DIES GRATIÆ. L. Lat. [L. Fr. *jour de grace*.] In old English practice. A day of grace, courtesy or favor. *Co. Litt.* 134 b. The *quarto die post* was sometimes so called. *Id.* 135 a.

DIES IN BANCO. L. Lat. In practice. A day (or days) in banc; a day in the bench, or court of Common Bench. 3 *Bl. Com.* 277. *Bract.* fol. 361, 362. See *Days in bank*.

DIES INTERCISI. Lat. In the Roman law. Divided days; days on which the courts were open for a part of the day. *Calv. Lex. Jur.* 1 *Mackeld. Civ. Law*, 24, § 35, note.

DIES JURIDICUS, (pl. **DIES JURIDICI**). Lat. In practice. A court or

juridical day; a day for judicial proceedings or legal purposes. *Clerke's Prax. Cur. Adm.* tit. 1. *Dies juridici* are otherwise termed in the old books, *temps convenables*. *Britt.* c. 52. *Co. Litt.* 135 a. The term is derived from the civil law. *Omnes dies jubemus esse juridicos. Cod.* 3. 12. 7.

DIES LEGITIMUS. Lat. In the civil and old English law. A lawful or law day; a term day. *Hullifaz, Anal.* b. 3, c. 9, § 6. *Bract.* fol. 334 b. A day of appearance. *Id.* fol. 359.

DIES MARCHIÆ. L. Lat. In old English law. A day of the march, or border. A day of meeting of the English and Scotch, anciently appointed to be held annually on the *marches* or borders, to adjust all differences, and to preserve the articles of peace. *Cowell. Tomlins.*

DIES NEFASTI. Lat. In the Roman law. Days on which the courts were closed, and it was unlawful to administer justice; answering to the *dies non juridici* of the English law. 1 *Mackeld. Civ. Law*, 24, § 35, note. See *Dies fasti*.

DIES NON. An abbreviation of *Dies non juridicus*, (q. v.)

DIES NON JURIDICUS. L. Lat. In practice. A day not juridical; not a court day. A day on which courts are not open for business, such as Sundays and some holidays; as Christmas, Good Friday and Easter in England; and the fourth day of July, and (in some places) the first day of January in the United States.* 3 *Chitt. Gen. Pr.* 104, 107. *Wharton's Lex. voc. Holiday.*

DIES PACIS. L. Lat. In old English law. Days of peace. According to Sir Henry Spelman, the Saxons and Normans divided the year between God [or the church] and the king; calling those days and parts of the time which were assigned to the former, *dies pacis ecclesiæ*, (days of the peace of the church,) and the residue *dies pacis regis*, (days of the king's peace). *Crabb's Hist. Eng. Law*, 35. *Spelman's Orig. of Terms*, cited *ibid.*

DIES SOLARIS. L. Lat. In old English law. A solar day, as distinguished from what was called *dies lunaris*, (a lunar day); both composing an artificial day. *Bract.* fol. 264. See *Day*.

DIES SOLIS. Lat. In civil and old English law. Sunday, (literally, the day of the sun). So called in *Cod.* 3. 12. 7.

DIES UTILES. Lat. In the Roman

law. Available days. *Inst.* 2. 10. 6. Days on which a party having knowledge that an inheritance was open to him, might apply to the judge. *Cooper's trans.* See *Utiles*.

DIET, Dyet. In Scotch practice. The sitting of a court. 3 *Hov. St. Trials*, 654.

An appearance day. *Bell's Dict.*

A day fixed for the trial of a criminal cause. 2 *Alison's Pr.* 343. 2 *Brown's R.* 240.

A criminal cause as prepared for trial 1 *Brown's R.* 268. 2 *Id.* 141. "Deserting the diet." *Arkley's R.* 481.

DIETA, Diarta. L. Lat. [from *dies*, a day.] In old English law. A day's journey, (*iter unius diei*). *Spelman. Bract.* fol. 135 b, 163, 235 b, 359. Treby, C. J. 1 *Ld. Raym.* 432, 433. According to Bracton, (fol. 235 b,) a reasonable *dieta* consisted of twenty miles. Blackstone makes this to be the computation of Sir Matthew Hale, but Hale merely refers to the passage in Bracton, (fol. 235 b,) which Blackstone has not quoted. *Hale on F. N. B.* 184, note. 3 *Bl. Com.* 218. See *Fleta*, lib. 4, c. 28, § 13.

A day's work. *Fleta*, lib. 2, c. 73, § 2. *Cowell.*

A day's expenses. *Fleta*, lib. 2, c. 14, § 2.

DIETÆ COMPUTATÆ. L. Lat. In old practice. Journeys accounts. Literally, days' journeys computed, or reckoned. *Selden's Diss. ad Flet.* c. 8, sect. 1. Talfour, Serj. arg. 7 *Man. & Gr.* 773, 774, and notes. See *Journeys accounts*.

DIEU SON ACTE. L. Fr. In old law. God his act; God's act. An event beyond human foresight or control. *Termes de la Ley.* See *Act of God*.

DIEZ, Dies, Dieux. L. Fr. God. *Kelham.*

DIFALLEMENT. L. Fr. Defamation. *Kelham.*

DIFFACERE, Disfacere. L. Lat. [O. Fr. *defacer*.] In old European law. To disfigure or *deface*; to mutilate; to destroy. *Spelman. LL. Longobard.* lib. 1, tit. 25, l. 68, cited *ibid.*

Diffactio; a mutilating or maiming. *Whishaw.*

DIFFAMATIO. Lat. In old English law. Defamation or slander. *Reg. Orig.* 49. *Artic. Cleri.* c. 1, 4. *Fleta*, lib. 2, c. 60, § 33.

DIFFIDARE, Diffiduciare. L. Lat.

[from *dis*, priv. and *fides*, fealty or faith.] In feudal law. To renounce one's fealty or allegiance; the opposite of *affidare*, (q. v.) *Spelman*.

To put out of allegiance; to outlaw. *Quos tanquam inimicos diffidavimus. Cart. Confirm.* 49 Hen. III.

To proclaim hostilities; to declare war, (*faida*); to defy. *Spelman. Calvin de Verb. Feud. Skene de Verb. Sign. voc. Affidatio. Grot. de Jur. Bell. lib. 3, c. 3, § 9.*

DIFFIGURARE. L. Lat. In old English law. To disfigure or deform. *Spelman. LL. Longobard. lib. 1, tit. 25, l. 43, cited ibid.*

DIFFINDERE. Lat. In the Roman law. To put off or postpone. *Calv. Lex. Jur.*

DIFFORCIARE. L. Lat. In old English law. To deny, or keep from one. *Difforciare rectum*; to deny justice to any one, after having been required to do it. *Matt. Par. A. D. 1164.* Perhaps the same with *Deforciare*, (q. v.)

DIGEST. See *Digests*.

DIGESTA. Lat. [from *digerere*, to divide or arrange.] Digesta. One of the titles of the Pandects of Justinian. *Inst. proœm. § 4. Dig. proœm. Id. De Conf. Dig. § 1. Cod. 1. 17. 1. 12.* Bracton uses the singular *Digestum. Bract. fol. 19.*

DIGESTS. [Lat. *Digesta*, q. v.] The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation *Dig.* instead of *Ff.* as formerly. *Inst. proœm. §§ 2, 4. Cooper's Notes, in loc.* See *Pandects, Ff.* Sometimes called *Digest*, in the singular.

DIGITUS. Lat. In old records. Hand-writing. *Spelman.*

DIGNITARY. In canon law. A person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, &c.; but it now includes all the prebendaries and canons of the church. *Brande. See 3 Inst. 155.*

DIGNITAS. Lat. In the civil law. Dignity. *Cod. 12. 1—8.*

DIGNITY. [Lat. *dignitas*.] In English law. An honor; a title, station or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. *3 Bl. Com. 37. 1 Id. 896. 1 Crabb's Real Prop. 468, et seq.*

DIJAU, Dijou. L. Fr. Thursday. *Kelham.*

ΔΙΚΑΖΕΙΝ, Δικάζειν. Gr. [from *δικη*, justice.] In the civil law. To judge. *Nov. 15, c. 3, § 2. Nov. 26, c. 3, § 1.*

ΔΙΚΑΣΤΗΡΙΟΝ, Δικαστήριον. Gr. [from *δικη*, justice.] In the civil law. A judicial tribunal; a court. *Nov. 18, c. 10.*

ΔΙΚΑΣΤΗΣ, Δικαστής. Gr. [from *δικη*, justice.] In the civil law. A judge. *Nov. 53, c. 4. Nov. 82, c. 13.*

ΔΙΚΗ, Δίκη. Gr. In Greek and civil law. Right; justice. *Calv. Lex. Jur. Schrev. Lex.*

An action; a cause. *Nov. 15, c. 3, § 2. Nov. 17, c. 3.*

Judgment. *Schrev. Lex.*

A penalty or punishment. *Id.*

A forensic pleading, (*libellus forensis*). *Calv. Lex.*

A custom recognized by law. *Schrev. Lex.*

DILAPIDATION. [L. Lat. *dilapidatio*, from *di*, apart, and *lapidare*, from *lapis*, a stone.] Literally, the taking apart of the stones of a building. The pulling down of a building, or any part of it; the suffering a building, or any part of it, to fall, or be in a state of decay; neglect of necessary repairs of a building.* *Grady on Fixtures, 269, et seq. 5 Carr. & P. 239.* Used as synonymous with *waste* in buildings, and sometimes extended so as to include waste in lands, woods, &c. *Grady on Fixtures, 222, 275. See infra.*

In ecclesiastical law. A kind of ecclesiastical waste, which is either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage, and other buildings thereunto belonging, to decay. *3 Bl. Com. 91. 3 Steph. Com. 112, 711.* Dilapidation is where an incumbent on a church living suffers the parsonage house or out-houses to fall down, or lie in decay for want of necessary reparation; or it is the pulling down or destroying any of the houses or buildings belonging to a spiritual living, or destroying of the woods, trees, &c. appertaining to the same. *Degge's Parson's Counsellor, b. 1, c. 8.*

DILATIO. Lat. [from *differre*, to put off.] In old English law. Delay. *Sine dilatione*; without delay. *Reg. Orig. 1. Dilationes in lege sunt odiosæ.* Delays in law are odious. *Branch's Princ.*

In the civil and canon law. Time allowed a plaintiff or defendant to do a judicial act; the putting off, or postponement

of a cause. *Cod.* 3. 11. *Calv. Lex.* 4. *Reeves' Hist. Eng. Law.* 17.

DILATORIUS. Lat. [from *differre*, to put off.] In civil and old English law. That which delays or puts off; dilatory. Anciently applied to a defendant's exception or plea by which the action was delayed, (*per quam actio differtur*). *Bract.* fol. 399 b. *Fleta*, lib. 6, c. 36, § 3. *Inst.* 4. 13. 8, 10, 11. See *Dilatory plea*, *Exceptio*.

DILATORY PLEA. [Lat. *exceptio dilatoria*, q. v.] A plea which tends or is intended to delay or put off an action, by questioning the propriety of the remedy rather than by denying the injury, or right of action.* 3 *Bl. Com.* 391. Anciently termed a *dilatory*. *Hob.* 245.—A plea founded on some matter of fact, not connected with the merits of the case, but such as may exist without impeaching the right of action itself. 3 *Steph. Com.* 576. 1 *Reeves' Hist. Eng. Law.* 451. This class of pleas comprises pleas to the jurisdiction, pleas in suspension, and pleas in abatement. *Steph. Pl.* 46. 3 *Steph. Com.* 576.

DILIGENCE. [Lat. *diligentia*, q. v.] In the law of bailment. Care; carefulness; attention. "There are infinite shades of care or diligence, from the slightest momentary thought, or transient glance of attention, to the most vigilant anxiety and solicitude." *Jones on Bailm.* 5. But only three degrees of diligence are generally recognized, viz.: high, *great* or extraordinary diligence; *common* or ordinary diligence; and low or *slight* diligence. *Story on Bailm.* §§ 11, 16. Common or ordinary diligence is that degree of diligence which men, in general, exert in respect to their own concerns. It may be said to be the common prudence which men of business and heads of families usually exhibit in affairs which are interesting to them. *Id.* § 11. See *Ordinary care*, *Ordinary diligence*, *Negligence*.

DILIGENCE. In Scotch law and practice. Process of law, by which persons, lands or effects are seized in execution or in security for debt.* *Ersk. Inst.* b. 2, tit. 11, § 1. *Bell's Dict.* *Brande*.

Process for enforcing the attendance of witnesses, or the production of writings. *Ersk. Inst.* b. 4, tit. 1, § 71.

DILIGENTIA. In the civil and old English law. Diligence; care; carefulness. The opposite of *culpa*, (q. v.) *Dig.* 18. 1. 68, pr. *Calv. Lex.* *Brissonius*. *Fleta*, lib. 2, c. 59, § 4.

DILIGIATUS. L. Lat. [from *di*, away, and *ligius*, or *ligatus*, under the protection of the law.] In old English law. Cast out of the law's protection, (*ejectus à patrocinio legis*); outlawed; an outlaw. *Spelman. LL. Hen.* 1. c. 45, cited *ibid.*

DILLEOQUES, Dillouques. L. Fr. Afterwards. *Kelham*.

DIL'O'ES. A contraction of *Dilationes*. *Fleta*, lib. 5, c. 4, § 9.

DILUCIDUS. Lat. In old English law. Clear; lucid; clear in mind; rational. *Dum dilucidis gauderet intervallis*; while he enjoyed lucid intervals. *Bract.* fol. 43. *Fleta*, lib. 3, c. 3, § 10.

DIMAIGNE, Dimeine, Dimeins, Dimeingt, Dimenche, Dimegne. L. Fr. Sunday. *Kelham*.

DIMAR. L. Fr. Tuesday. *Kelham*.

DIMECRE. L. Fr. Wednesday. *Kelham*.

DIMIDIA. Lat. In the civil and old English law. Half. *Dimidia pars*; a half part; one-half. *Dig.* 48. 19. 8. *Brissonius*. See 6 *Mod.* 231.

Dimidia marca; half a mark; a demi-mark. *Fleta*, lib. 2, c. 30. *Dimidia villa*; half a vill; a demi-vill. *Id.* lib. 1, c. 18, § 4. *Dimidia acra*; half an acre. *Towne. Pl.* 64.

DIMIDIUM. Lat. In old English law. Half; a half; *Dimidium unius libræ*; half a pound. *Towne. Pl.* 64. *Dimidium unius acræ*; half an acre. *Id. ibid.*

An undivided half of a thing, as *medietas* was the half part divided, *Dodridge, J. Latch.* 224. But see 6 *Mod.* 231.

DIMIDIETAS. L. Lat. [from *dimidius*, half.] In old English law. One-half; a moiety. *Cowell*. See *Medietas*.

DIMIDIUS, Dimidia, Dimidium. Lat. Half; a half; the half. See *Dimidia, Dimidium*.

DIMINUERE. Lat. In old English law. To lessen or diminish; to take away, leave out or omit. *De recordo diminuerè*; to take from, or diminish a record. *Bract.* fol. 147.

DIMINUTIO, Diminutio. Lat. [from *diminuere*, q. v.] In the civil law. Diminution; a taking away; loss or deprivation. *Diminutio capitis*; loss of status or condition. See *Capitis diminutio*.

DIMINUTION. [Lat. *diminutio*, from *diminuere*, q. v.] In practice. Omission; imperfection or deficiency. A term applied to a record, where something is left out of it. See *Diminuere*. In proceedings for the

reversal of a judgment, if the whole record be not certified, or not truly certified by the inferior court, the party suing out the writ of error may *allege diminution*, [i. e. may allege that it is imperfect in certain respects,] and may thereupon have a writ to the court below, to certify the whole record. 2 *Tidd's Pr.* 1167.

DIMISI. L. Lat. [from *dimittere*, to demise.] In old conveyancing. I have demised. *Dimisi, concessi, et ad firmam tradidi*; have demised, granted and to farm let. The usual words of operation in a lease. 2 *Bl. Com.* 317, 318. Sometimes written *dimisi*, (q. v.)

DIMISIT. L. Lat. In old conveyancing. (He) has demised. See *Dimisi*.

DIMISSIO. L. Lat. [from *dimittere*, to demise.] In old English law. A demise or lease. So written in Bracton, though the more modern form is *demissio*. *Bract.* fol. 23 b. See *Demissio*.

DIMISSOR. L. Lat. [from *dimittere*, to demise.] In old English law. A lessor. *Fleta*, lib. 3, c. 12, § 7.

DIMISSORÆ LITTERÆ. Lat. In the civil law. Letters dimissory or dismissory, commonly called *apostles*, (*quæ vulgo apostoli dicuntur*). *Dig.* 50.16.108. See *Apostoli, Apostles*.

DIMITTERE. Lat. In the civil law. To send away; to discharge; to dismiss. *Filius de potestate dimittere*; to dismiss a son from one's power or authority; to emancipate. *Inst.* 1.12.7, 10. *Uxorem dimittere*; to send away or repudiate a wife. *Calv. Lex. Jur.* *Dimitti debito*; to be released from a debt. *Id.*

In old English law. To send away; to dismiss; to part with. *Dimittere se*; to dismiss one's self; to withdraw from. *Se dimittere, et a possessione recedere*; to dismiss himself and withdraw from the possession. *Bract.* fol. 31 b, 85. *Id.* fol. 49, c. 20, in tit. See *Demise of the crown*.

To let go; to release or discharge from custody. *Per ballium dimittere*; to discharge on bail. *Fleta*, lib. 1, c. 26, § 3. *Per plegios dimittere*. *Id.* lib. 2, c. 52, § 40. *Dimisit per pleviam*. 3 *How. St. Trials*, 121.

To demise. See *Dimisi, Dimissio*.

DINER. L. Fr. A penny. *Kelham*.

DINERO. Span. [from Lat. *denarius*.] In Spanish law. Money. *Dinero contado*; money counted. *White's New Recop.* b. 2, tit. 13, c. 1, § 1.

DIOCESE. [Lat. *diæcesis*, from Gr.

διοικησις, from *διοικω*, to govern.] In ecclesiastical law. The see of a suffragan bishop; the circuit or territorial extent of a bishop's jurisdiction. 1 *Bl. Com.* 111. *Co. Litt.* 94. 4 *Reeves' Hist.* 4. *Tomlins*.

A civil division of the Roman empire, embracing several provinces. *Calv. Lex. Jur.*

ΔΙΩΚΩΝ, ΔΙΩΚΩΝ. Gr. [from *διώω*, to pursue.] In the civil law. A plaintiff; a pursuing party. *Nov.* 49, c. 3. *Scotticé*, a pursuer.

DIPLOMA. Græco-Lat. [from Gr. *διπλω*, to double or fold double.] In the civil law. A royal charter; letters patent granted by a prince or sovereign. *Calv. Lex. Brissonius*. Sometimes written *duploma*.

An instrument given by colleges and societies on commencement of any degrees. *Wharton's Lex.*

A license granted to a physician, &c. to practice his art or profession. See 25 *Wendell's R.* 469.

DIPLOMACY. Negotiation or intercourse between nations through their representatives. The rules, customs, and privileges of representatives at foreign courts. See *Wheat. Elem. Intern. Law*, 355.

DIPLOMATICS. The science of diplomas, or of ancient writings and documents; the art of judging of ancient charters, public documents, diplomas, &c., and discriminating the true from the false. *Webster. Wharton's Lex.*

DIPTYCHA. Lat. [Gr. *δίπτυχα*, two-leaved.] Diptychs; tablets of wood, metal or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. *Hubback's Evid. of Succession*, 567. *Encyclop. Amer.* See *Calv. Lex. Brissonius*.

DIRATIONARE, Derationare, Disrationare. L. Lat. [from *di*, or *dis*, contrary, and *ratiocinari*, to prove.] In old English law. To deraign; to prove. *Dirationabit jus suum hæres propinquior*; the next heir shall prove his right. *Glanv.* lib. 2, c. 6. *Et parati sunt hoc dirationare*; and this they are ready to deraign or prove. *Id.* lib. 4, c. 6. *Id.* lib. 2, c. 20.

To disprove; to prove the contrary, or refute an adversary's allegation, (*assertio*-

nam contrariam refellere). Spelman considers this to be the proper meaning, though the word seems to occur rarely in this sense. See *Disrationare, Deraign*.

To make good a defence; to clear or acquit one's self. See *Barringt. Obs. Stat.* 21, note [d].

DIR. L. Fr. Different; diverse. *Dires enkes*; different inks. *Britt. c.* 48.

DIRECHEF. L. Fr. Again. *Kelham*.

DIRE. L. Fr. [Lat. *dicere*.] To say.

DIRECT. [from Lat. *directus*, straight.] Immediate; by the shortest course; without circuit; operating by an immediate connection or relation, instead of operating through a medium; the opposite of *indirect*. *Direct evidence* is that which immediately applies to, or goes to establish the principal fact to be proved; *indirect evidence* is that which goes to prove the principal fact by establishing other, or subordinate facts, from which the principal fact may be inferred or presumed. See *Circumstantial evidence*.

In the usual or regular course or order, as distinguished from that which diverts, interrupts or opposes; the opposite of *cross* or *contrary*. *Direct examination* of a witness is thus distinguished from *cross examination*; as the *actio directa* of the Roman law was from the *actio contraria*, (q. v.)

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of *collateral*, (q. v.) The *direct line* of descent is that composed of persons arranged in the natural or genealogical order of succession, as son, grandson; father, grandfather, &c.; each person being immediately descended from the one above him in the series. See *Linea recta*.

DIRECTUM. Lat. In the civil law. That which is founded on strict law, as distinguished from equity. 1 *Mackeld. Civ. Law*, 267, 268, Kaufmann's note.

DIRECTUM, *Derictum, Driatum*. L. Lat. [O. Fr. *droict*.] In old European law. Right. *Spelman*, voc. *Derittum*. That which is straight, as opposed to crooked, (*tortum*, tort, or wrong). *Id.* See *Tort*.

DIRIBITORES. Lat. In the Roman law. Officers who distributed ballots to the people, to be used in voting. *Taylor's Civ. Law*, 192.

DIS. L. Fr. Ten. *Kelham*.

DISABILITY. [L. Lat. *dishabilitas*,

disabilitas.] Incapacity to do a legal act, as to enter upon lands, to inherit or convey, to sue or be sued, &c., arising from the peculiar condition of a person, as from infancy, coverture, lunacy, alienage, imprisonment, or absence. *Termes de la Ley. Cowell. Blount. Angell on Limit. cc.* 19, 36. 2 *Hilliard's Real Prop.* 169, et seq. *United States Digest*, Limitations of actions.

DISABLING STATUTES. The English statutes of 1 Eliz. c. 19, 18 Eliz. c. 10, 14 Eliz. cc. 11, 14, 18 Eliz. c. 11, and 43 Eliz. c. 29, (otherwise called the restraining statutes,) by which all colleges, cathedrals, and other ecclesiastical or eleemosynary corporations, are restrained from making any leases of their lands, unless under certain regulations. 2 *Bl. Com.* 319, 321. *Co. Litt.* 44 a. 3 *Steph. Com.* 140.

DISADVOCARE. L. Lat. To disavow. See *Deadvocare*.

DISAFFIRM. To refuse to confirm; to disclaim being bound by a former act; to declare that one will not abide by a former act.

DISAFFOREST. In English law. To discharge from being a forest; to release from the forest laws; to restore land which had been converted into a forest, to its former condition.* *Crabb's Hist.* 153, c. 12. 2 *Bl. Com.* 416. See *De-afforest*.

DISBAR. In English practice. To expel a barrister from the bar. A power vested in the benchers of the four Inns of court, subject to an appeal to the fifteen judges. *Wharton's Lex.*

DISBOCATIO. L. Lat. [from *dis*, priv. and *boscus*, wood.] In old English law. A conversion of wood grounds into arable or pasture; an assarting. *Cowell. See Assart*.

DISCARCARE. L. Lat. [from *dis*, priv. and *carcare*, to load or charge.] In old English law. To discharge, to unload; as a vessel. *Carcare et discarcare*; to charge and discharge; to load and unload. *Cowell. Plac. Parl.* 18 *Edw. I.* cited *ibid.* In the Salian law, it is written *discargare*, (q. v.)

Discarcatio; a discharging or unloading of a vessel. *Towns. Pl.* 226.

DISCARGARE. L. Lat. In old European law. To discharge or unload, as a wagon. *Spelman. L. Salic. tit.* 29, § 21, cited *ibid.*

DISCEIT. See *Deceit*.

DISCENT. The old way of writing

descent, after the French. *Litt.* sect. 385. *Co. Litt.* 237. 1 *Salk.* 241.

DISCEPTATIO CAUSÆ. Lat. In Roman law and practice. The argument or disputation of a cause by the advocates on both sides. *Hallifax, Anal.* b. 3, c. 9, num. 39.

DISCHARGE. A setting free; a clearing, acquittance, release or delivery.

The instrument by which a person is discharged from a debt or obligation, or an encumbrance is cancelled; as the *discharge* of an insolvent, the *discharge* of a mortgage, &c. See *Charge*.

In maritime law. The unlading or unlivery of a cargo from a vessel. *Story, J.* 2 *Sumner's R.* 589, 600.

In equity practice. A statement of disbursements, and an offset of counter claims, brought in and filed on accounting before a master in chancery, and which follows the *charge* in the order of the proceedings, though not properly a defence to it.* *Hoffman's Mast. in Chanc.* 38. See *Charge* and *discharge*.

To **DISCHARGE.** [from L. Lat. *dis-cargare.*] To set free or release; as to *discharge* a person from arrest or imprisonment, or from the obligation of his debts.

To dismiss or send away; as to *discharge* a jury from further attendance in court.

To dissolve, cancel or put an end to; as to *discharge* a contract, a mortgage, &c.

To unload; as to *discharge* a vessel; to take out; as to *discharge* a cargo. *Webster.* See *Discharge*.

DISCLAIM. [L. Lat. *disclamare, dis-advocare.*] To relinquish a claim; to deny having a claim, as by a disclaimer in equity. See *Disclaimer*.

To deny or disavow another's claim; as in the case of a disclaimer of tenure. See *Id.*

To decline accepting an estate, interest, or office. See *Id.*

DISCLAIMER. [from *dis*, priv. and Fr. *clamer*, to claim; L. Lat. *disclaimium, disclamatio, disadvocatio.*] A denial, disavowal or renunciation of a title or claim; the relinquishment or waiver of an interest or estate.

Disclaimer of tenure in English law, is where a tenant, in an action to recover services, disowns his tenure or *disclaims* to hold of his lord, which occasions a forfeiture of his estate. 2 *Bl. Com.* 275. 3 *Id.* 233. 1 *Steph. Com.* 431. *Termes de la Ley.* 3 *Reeves' Hist.* 457. And in Ameri-

can law, a tenant *disclaiming* his landlord's title, and claiming the fee himself, is considered as a trespasser and may be ejected. 13 *Peters' R.* 1. 14 *Id.* 156.

Disclaimer of an estate is the refusal to accept an estate to which a person is entitled. There can be no disclaimer of an estate by the curtesy. 1 *Hilliard's Real Prop.* 116, and cases cited *ibid.*

Disclaimer in equity is where a defendant, by his answer, renounces all claim to the subject of the demand made by the plaintiff's bill. *Story's Equity Pl.* § 838. A disclaimer is distinct in substance from an answer, though sometimes confounded with it. But it can seldom be put in without an answer. *Id. ibid.* *Mitford's Chanc. Pl.* 318, (378, Moulton's ed. and notes).

DISCLAMATION. In Scotch law. Disavowal of tenure; denial that one holds lands of another. *Bell's Dict.* *Skene de Verb. Signif.* See *Disclaimer of tenure*.

DISCOMMON. To deprive commonable lands of their commonable quality, by enclosing and appropriating or improving them. See *Common, Appropriare*.

DISCONTINUANCE. A cessation, intermission, interruption or suspension. *Co. Litt.* 325 a. *Litt.* sect. 592. "An ancient word in the law," and of divers significations. *Id. ibid.*

The omission of a continuance. See *infra*.

DISCONTINUANCE OF AN ESTATE. The termination or suspension of an estate tail, in consequence of the act of the tenant in tail, in conveying a larger estate in the land than he was by law entitled to do. 2 *Bl. Com.* 275. 3 *Id.* 171. An alienation made or suffered by tenant in tail, or by any that is seised in *auter droit*, whereby the issue in tail, or the heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter. *Co. Litt.* 325 a. Mr. Preston calls it "the cesser of a seisin under an estate, and the acquisition of a seisin under a new, and necessarily a wrongful title." *Preston on Merger*, ch. ii.

Discontinuance is mentioned by Blackstone as a species of ouster of the freehold; and its operation formerly was, to take away entirely the right of entry, and put the issue and those in reversion and remainder, to the necessity of bringing a real action. 3 *Bl. Com.* 167. *Termes de la Ley.* 1 *Steph. Com.* 431, note. But now, by statute 3 & 4 Will. IV. c. 27, s. 39, no discontinuance

shall take away any right of entry. 1 *Steph. Com.* 522, 523. So that the title by discontinuance seems to be abolished, in English, as in American law. 3 *Id.* 485. 2 *Crabb's Real Prop.* 1064, § 2456. 2 *Arch. N. Prius*, 301. 1 *N. Y. Rev. Stat.* [725], 720, § 32.

DISCONTINUANCE. In practice. The termination of an action at law by the voluntary act of the plaintiff, and which is usually effected by entering a common rule for that purpose. 1 *Tidd's Pr.* 679. 2 *Arch. Pr.* 234. This cannot, however, be done without the payment of the defendant's costs, unless by consent or on a settlement, &c. *Id. ibid.* And sometimes, not without leave of the court. *Arch. N. Pract.* 306. A *non pros* (q. v.) is sometimes termed a discontinuance.

The termination of an action, in consequence of the plaintiff's omitting to continue the process or proceedings by proper entries on the record. 3 *Bl. Com.* 296. 1 *Tidd's Pr.* 678. 2 *Arch. Pr.* 223. See *Continuance*. With the disuse or abolition of continuances, this has become obsolete. *Arch. N. Pract.* 305, 306.

DISCONTINUANCE. In pleading. That technical interruption of the proceedings in an action, which follows where a defendant does not answer the whole of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered. *Steph. Pl.* 216, 217.

DISCONTINUE. L. Lat. In old law and practice. To discontinue; to intermit, disuse, interrupt. *Co. Litt.* 325 a.

DISCONTINUOUS (or **INTERRUPTED**) **SERVITUDE.** In the civil law. That kind of servitude which needs the act of man to be exercised; such as the right of passage, of drawing water, of pasture, and the like. *Civ. Code of Louis.* art. 723.

DISCONVENABLE. L. Fr. Improper; unfit. *Kelham*.

DISCOOPERTA. L. Lat. In old English law. Uncovered; out of repair, as a church. *Stat. Circumspecte Agatis.* 2 *Inst.* 489. *Fleta*, lib. 2, c. 60, § 28.

Discover, (q. v.)

DISCOUNT. [Fr. *deconte* or *decompte*.] Literally, a counting back, from or off.

In a general sense. An allowance or deduction made from a gross sum, on any account whatever.

In a more limited and technical sense.

The taking of interest in advance. See 6 *Ohio St. R.* 535.

An allowance paid on account of the immediate advance of a sum of money not due till some future period. *McCulloch's Dict.*

DISCOVER. L. Fr. and Eng. [L. Lat. *discooperta*.] In old English law. Not covert; unmarried; an unmarried woman or widow; one not within the bonds of matrimony. *Cowell. Blount.*

DISCOVERY. In equity. The revealing or disclosing of a matter by a defendant, in his answer to a bill filed for that purpose; the object of a species of bill in equity. See *infra. Hale on Discovery.*

DISCOVERY, BILL OF. In equity pleading. A bill for the discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power; but seeking no relief in consequence of the discovery, though it may pray for a stay of proceedings at law till the discovery is made. *Story's Eq. Pl.* § 311, 312, and notes. *Mitford's Chanc. Pl.* 53, (63, 64, Moulton's ed. notes). This is the definition of a bill of discovery properly so called, as distinguished from a bill for discovery and relief.

DISCREDIT. In the law of evidence. To deprive of credibility; to destroy or impair credibility. To discredit a witness is to destroy his credibility, or render it doubtful, by showing that his character is such as not to entitle him to be believed.

DISCRETIO. L. Lat. Discretion. *Discretio est discernere per legem quid sit iustum.* Discretion is to discern by the law what is just. 4 *Inst.* 41. 6 *Q. B.* 700.

DISCRETION. [L. Lat. *discretio*; Lat. *arbitrium*.] The liberty or power of acting according to one's own ideas of right, without being bound by any fixed rule. The exercise of judgment; the liberty of adapting one's conduct to circumstances.* See *Arbitrium*.

DISCRIES. L. Fr. Proclaimed. *Discries enemies*; notorious enemies. *Kelham*.

DISCUS, Descus. L. Lat. In old records. A desk, or leaning shelf. *Cowell*.

DISCUSSION. [Lat. *discussio, excursio*.] In the civil law. The exhausting of a remedy against a principal debtor, before proceeding against the surety.* *Story's Conf. of Laws*, § 322 b. *Burge on Suretyship*, 329, et seq. The creditor must first proceed against the principal and dis-

cuss him, before resorting to the surety. *Id. ibid.* This privilege of a surety was called, in the Roman law, *beneficium ordinis*, or *excussionis*. The word radically imports a thorough examination or search, as by *shaking apart*, (*discutiendo*), or shaking out (*excutiendo*).

DISE. L. Fr. The tenth part. *Kelham*.

DISFRANCHISE. To deprive or divest certain places or persons of any privilege, freedom, liberty or franchise. See *Franchise*.

DISGAVEL. In English law. To deprive lands of that principal quality of gavelkind tenure by which they descend equally among all the sons of the tenant. 2 *Wooddes. Lect.* 76. 2 *Bl. Com.* 85. *Robinson on Gavelkind*, 97, note. 6 *Mann. & Gr.* 282. See *Gavelkind*.

DISGRADING. In old English law. The depriving of an order or dignity. *Termes de la Ley.* *Blount.* See *Degradation*.

DISHABILITAS. L. Lat. In old English law. Disability; incapacity. *Towns. Pl.* 32, 64.

DISHERISON, Disinherison. L. Fr. and Eng. [L. Lat. *exheredatio*.] In old English law. Disinheriting; a depriving or putting out of an inheritance. *Stat. of Vouchers*, 20 *Edw. I.* *Stat. 8 Ric. II.* c. 4. *F.N.B.* 55, C. 3 *Bl. Com.* 228. *Co. Litt.* 53.

DISHONOR. In mercantile law and usage. To refuse or decline to accept a bill of exchange, or to refuse or neglect to pay a bill or note at maturity. *Smith's Merc. Law*, 138, 146, 153. See 1 *Wisconsin R.* 264, 276. In *Sheldon v. Braithwaite*, (7 *Mees. & W.* 436), the Court of Exchequer held that the word "dishonored" had a technical signification, and imported that the bill had been presented for payment and had not been paid. And see 14 *Mees. & W.* 7. 10 *Ad. & Ell.* 125.

DISJUNCTA. Lat. [from *disjungere*, to disjoin.] Things (words, phrases) disjoined, disunited or separated. *Sæpe ita comparatum est, ut conjuncta pro disjunctis accipiantur, et disjuncta pro conjunctis*; it often happens that things (words or phrases) conjoined are to be taken as disjoined, and those disjoined as conjoined. *Dig.* 50. 16. 53. See *Conjuncta, Aut, Or.*

DISJUNCTIM. Lat. In the civil law. Separately; severally. The opposite of *conjunctim*, (q. v.) *Inst.* 2. 20. 8. *Calvin*,

Lex. Jur. Divisim (q. v.) was the term used in the common law.

DISLIEE. L. Fr. Not bound; under no obligation. *Kelham*.

DISMARI, (pl. *Dismaries*). L. Fr. Unmarried. *Stat. Westm.* 1, c. 22. *Kelham*.

DISMES. L. Fr. [L. Lat. *decimæ*.] Tithes. See *Tithes*.

Tenths; the tenths of all spiritual livings granted to the crown. *Cowell. Blount.* See *Decimæ, Tenths*.

DISMISS. [from Lat. *dimittere*, from *di*, or *dis*, and *mittere*, to send.] In practice. To send away; to send out of court; to dispose of finally. See 6 *Mod.* 232. A term originally peculiar to chancery practice, but now applied to certain common law proceedings, writs, &c. See 24 *Mississippi R.* 462, where the distinction between "dismiss" and "quash," as applied to writs is shown.

DISORDERLY PERSONS. A species of offenders whose punishment is made the subject of particular statutes by which they are defined. *Stat. 5 Geo. IV.* c. 83, amended by 1 & 2 *Vict.* c. 38. 4 *Steph. Com.* 309. 4 *Bl. Com.* 169. 1 *N. Y. Rev. Stat.* [638], 645.

DISPARAGARE. L. Lat. [L. Fr. *disparager, desparager*; from *dis*, priv. and Fr. *parage*, family or parentage, or from Lat. *dispar*, unequal. *Spelman. Co. Litt.* 80 a.] In old English law. To bring together those that are unequal, (*disparare conferre*); to connect in an indecorous and unworthy manner; to connect in marriage those that are unequal in blood and parentage, (*impares sanguine et natalitiis connectere*); to disparage. *Spelman. Ita maritentur ne disparagentur*; they shall be so married that they be not disparaged. *Magna Charta, (Regis Johan.)* c. 3. 2 *Bl. Com.* 71. *Stat. Merton*, c. 7.

DISPARAGATIO. L. Lat. [L. Fr. *disparagacion*; from *disparagere*, q. v.] In old English law. Disparagement. *Hæredes maritentur absque disparagatione*; heirs shall be married without disparagement. *Magna Charta*, (9 *Hen. III.*) c. 6.

DISPARAGATION. L. Fr. Disparagement; the matching an heir, &c. in marriage, under his or her degree or condition, or against the rules of decency. *Kelham*.

DISPARAGE. [L. Lat. *disparagare*, q. v.] To connect unequally; to match unsuitably. "The ward who is ward for

knight's service land, is accounted in law *disparaged*, if he be tendered a marriage of the burgher's parentage." *Bacon's Arg. Low's case, Works*, iv. 235. See *Disparagement*.

DISPARAGEMENT. [L. Lat. *disparagatio*, q. v.] An unequal alliance, or unsuitable connection in marriage. An injury done to a ward by marrying him or her to a person of inferior degree, or against decency.* 2 *Bl. Com.* 70. *Co. Litt.* 80. A shame, disgrace or villainy done by the guardian in chivalry to his ward within age in point of his marriage. *Termes de la Ley*.

DISPARAGER. L. Fr. To disparage.

DISPARAGIUM. L. Lat. In old Scotch law. Inequality in blood, honor, dignity or otherwise. *Skene de Verb. Sign.*

Disparata non debent jungi. Things unlike ought not to be joined. *Jenk. Cent.* 24, marg.

DISPARK. In English law. To dissolve a park. *Cro. Car.* 59. To convert a park into ordinary ground.

DISPAUPER. In practice. To take away from a person the capacity or privilege of suing in *forma pauperis*, which he has already exercised. 1 *Tidd's Pr.* 98.

DISPENZA. L. Lat. In old English law. A place in a house where things were kept under the key of the housewife; a spence. *Bract.* fol. 151 b.

DISPENSATION. In English law. An exemption from some law; a permission to do something forbidden, or to omit something commanded. *Wharton's Lex. Vaugh.* 330.

DISPIT, Dispitz. L. Fr. Contempt. *Kelham*.

DISPONE. In Scotch law. To grant, convey or dispose of. 1 *Kames' Equity*, 254. Closely formed from the Lat. *disponere*, (q. v.) As to the meaning of this term, see 3 *Bell's Appeal Cases*, 100, 120, 125.

Disponer; a grantor. 1 *Kames' Eq.* 256. *Disponee*; a grantee. *Id. ibid.* 1 *Forbes' Inst.* part 3, b. 1, ch. 1, tit. 1, sect. 1.

DISPONERE. Lat. To dispose of, or convey.

To arrange, or set in order; to direct or regulate. See *Cujus est dare ejus est disponere*.

DISPORT. L. Fr. Diversion; entertainment. *Kelham*.

DISPOSE. [from Lat. *disponere*, q. v.] To part with, as by sale, gift or otherwise.

Called a word of large extent. *Freem.* 177.

DISPOSITION. In Scotch law. A deed of alienation by which a right to property is conveyed. *Bell's Dict.*

DISPOSSESSION. A species of injury to real property by the amotion or deprivation of possession; otherwise termed *ouster*. 3 *Bl. Com.* 167. See *Ouster*.

DISPUNI. L. Fr. Dispunishable. *Dyer*, 28, (Fr. ed.)

DISPUNISHABLE. In old English law. Not answerable. *Co. Litt.* 27 b, 53. 1 *Steph. Com.* 245. 2 *Crabb's Real Prop.* 47, § 1000.

Not punishable. "This murder is punishable." 1 *Leon.* 270.

DISPUTABLE PRESUMPTION. In the law of evidence. A presumption of law, which may be rebutted or disproved. *Best. on Pres.* § 25. *Burr. Circ. Evid.* 47.

DISPUTATIO FORI. Lat. In the civil law. Discussion or argument before a court. 1 *Mackeld. Civ. Law*, 23, § 34. *Dig.* 1. 2. 2. 5.

DISRATIONARE. L. Lat. [L. Fr. *desreigner*.] In old English law. To prove; to deraign; to establish or make good a claim, charge or accusation. *Bract. ub. infra*. Spelman considers this as merely another form of *dirationare*, (q. v.); and makes its proper signification to be, to disprove or refute, (from *dis*, priv. and *rationari*, to prove). It is, however, never employed in this sense by Bracton, who uses it frequently, but only in the sense first given. *Et quod fecit hoc—offert et dirationare versus eum*; and that he did this—he offers himself to deraign (or prove) against him. *Bract.* fol. 138. See *Id.* fol. 101 b, 119, 372 b, 373 b. *Fleta*, lib. 1, c. 31, § 6. *Id.* lib. 1, c. 21, § 2. *Si negaverit, oportet quod appellatus hoc dirationet versus eum*; if he deny, the appellee must deraign this against him. *Bract.* fol. 151. *Dat appellatus vadium et defendendi, et appellator vadium dirationandi*; the appellee gives pledge to defend himself, and the appellant pledge to deraign (or prove his charge). *Id.* fol. 137, 144, 153. *Corpus dirationare*; to deraign (or prove) the body; to prove a man to be another's villein. *Id.* fol. 25 b, 191. *Villanus fuit, quia dirationavit eum coram justitiariis in villanum suum*; he was a villein, because he proved him before the justices to be his villein. *Id.* fol. 199 b, 306. See *Skene de Verb. Sign.*

Disrationatio is used in the same sense. See *infra*.

DISRATIONATIO. L. Lat. In old English law. Deraignment or proof; the making good a claim or charge. *Et quod ita fui inde dotata et seysita, habeo sufficientem disrationationem et probationem*; and that I was so endowed and seised thereof, I have sufficient deraignment and proof. *Bract.* fol. 313 b, 297. See *Fleta*, lib. 5, c. 39, § 5; c. 40, § 3.

DISSAISARE, Dissaisire. L. Lat. In old English law. To disseise, or put out of seisin. *Spelman*. The more usual forms are *disseysire* and *disseisire*. See *Disseise*.

DISSASINA. L. Lat. In old Scotch law. Disseisin; dispossession. *Skene de Verb. Sign.*

DISSATE. L. Fr. Saturday. *Kelham*.

DISSEISE. [L. Lat. *disseisire, disseysire, dissaisire, disseisiare*; L. Fr. *disseisir*.] To deprive of seisin; to turn or put out of possession wrongfully; to oust or dispossession of a freehold, (*verum dominum è prædiis ejicere eademque per injuriam possidere*). *Spelman*. See *Disseisin*.

DISSEISEE. [L. Fr. *disseisi, disseise*; L. Lat. *disseysitus*.] The party who is disseised, or put out of possession or seisin of the freehold. *Litt.* sect. 472. *Termes de la Ley*.

DISSEISIARE. L. Lat. To disseise. *Magna Charta*, c. 27.

DISSEISIN, Disseisin. [L. Fr. *disseisine, dissaisin*; L. Lat. *disseisina, disseysina, dissaisina, dissasina*.] Deprivation or putting out of seisin; a wrongful putting out of him that is actually seised of the freehold. *Co. Litt.* 277 a. 3 *Bl. Com.* 169. A species of injury by ouster or dispossession. *Id. ibid.* 3 *Steph. Com.* 483. *Litt.* sect. 279. *Roscoe's Real Act.* 61. See *Seisin*.

Disseisin was originally an actual dispossession, but afterwards many acts were held to amount to disseisin, if the injured party chose to consider them as such; and this was called *disseisin by election*. 2 *Crabb's Real Prop.* 1063, 1064, § 2455. 4 *Kent's Com.* 482—490. 1 *Burr.* 60, 107, 108. See *Disseisina*.

DISSEISINA, Disseysina. L. Lat. In old English law. Disseisin. *Fleta*, lib. 4, c. 1. *Bract.* fol. 159 b, *et seq.* *Disseisina* *satis facit qui uti non permittit possessorem, vel minus commode, licet omnino non expellat*; he effectually commits a disseisin who does not permit the possessor [of land] to enjoy it, or makes the enjoy-

ment of it inconvenient, though he does not wholly (or absolutely) expel him. *Co. Litt.* 331. *Bract.* lib. 4, tr. 2.

DISSEISIRE, Disseysire. L. Lat. In old English law. To disseise. *Fleta*, lib. 4, c. 7, § 2, *et passim*. *Disseysire* is uniformly used by Bracton. *Bract.* fol. 26, *et passim*. *Fleta*, lib. 4, c. 7, § 2.

Disseisitor, disseysitor. A disseisor. *Fleta*, lib. 4, c. 4, § 6. *Bract.* fol. 176, *et passim*.

Disseisitus, disseysitus. A disseisee. *Bract.* fol. 176, *et passim*.

DISSEISITRIX. A female disseisor; a disseissoress, (q. v.) *Fleta*, lib. 4, c. 12, § 4.

DISSEISOR. [L. F. *disseisour*; L. Lat. *disseysitor*.] He who disseises; he who puts another out of possession or seisin of the freehold.* *Litt.* sect. 279. He who puts a man out of his land, without order of law. *Termes de la Ley*.

DISSEISORESS. [L. Lat. *disseisitrix*.] A woman that disseises another person. *Litt.* sect. 678. *Co. Litt.* 357 b.

DISSIGNARE. L. Lat. In old law. To break open a seal. *Whishaw*.

DISSIMULATIO. Lat. A passing over. *Dissimulatione tollitur injuria*. An injury is extinguished by the forgiveness or reconciliation of the party injured. *Ersk. Inst.* b. 4, tit. 4, § 108.

DISSOLUTION. [Lat. *dissolutio*, from *dissolvere*, q. v.] A putting an end to, as by unloosing some legal bond, or setting parties free from its effect.

DISSOLVERE. Lat. [from *di* or *dis*, and *solvere*, to loose, to free.] To dissolve, as a contract or connection; to unloose a legal bond or tie; to set free from obligation. *Eodem modo quo oritur, eodem modo dissolvitur*. By the same means by which a thing originates, by the same means is it dissolved. It is dissolved in the same mode in which it was created. *Story on Partn.* §§ 117, 268. Ordinarily, the dissolution of a contract is required by the common law to be by an instrument of the same dignity and solemnity as that by which it is created. *Id. ibid.*

DIST. L. Fr. [from *dire*, to say.] Spoken. *Britt.* c. 42.

Speech or report. *Kelham*.

DISTINCTE ET APERTE. L. Lat. In old English practice. Distinctly and openly. Formal words in writs of error, referring to the return required to be made to them. *Reg. Orig.* 17.

DISTINGUERE. Lat. To distinguish; to make a distinction.

Distinguenda sunt tempora; distingue tempora et concordabis leges. Times are to be distinguished; distinguish times and you will harmonize laws. 1 Co. 24. A maxim applied to the construction of statutes.

Distinguenda sunt tempora; aliud est facere, aliud perficere. Times must be distinguished; it is one thing to do, another to perfect. 3 Leon. 243. *Branch's Princ.*

DISTRATIO. Lat. [from *distrahere*, q. v.] In the civil law. The sale of a pledge by a creditor. *Inst.* 2. 8. 1. See *Distrahere*.

DISTRAHERE. Lat. [from *dis*, apart, and *trahere*, to draw.] In the civil law. To sell, particularly at auction. *Calv. Lex. Jur.* *Distrahere pignus*; to sell a pledge in payment of a debt. *Id. Heinecc. El. Jur. Civ.* lib. 2, tit. 8, § 467. 1 *Mackeld. Civ. Law*, 384, § 349.

To draw apart, or separate; to dissolve, as an obligation or contract. *Calv. Lex.*

In feudal law. To sell or alienate. *Feud. Lib.* 2, tit. 52.

DISTRAIN, Distrein. [from L. Fr. *distreindre, destreyndre*; L. Lat. *distringere*, to bind or coerce.] To take and keep the property of another as a pledge, (*ceu pignus et vadem*,) in order to compel the performance of some duty; such as the payment of rent, the performance of services, an appearance in court, &c. *Spelman.* 3 *Bl. Com.* 231.

DISTRAINOR, Distreinor. The party distraining goods or chattels.

DISTREINDRE. L. Fr. To distrain. *Britt.* c. 26. *Distreint*; distrained. *Id. ibid.* The more usual form is *destreindre* or *destreyndre*. *Id. per tot.*

DISTRESS. [from L. Fr. *distresse*; L. Lat. *districtio*, q. v.] The taking a personal chattel out of the possession of a wrong-doer into the custody of the party injured, to procure a satisfaction for a wrong committed; as for non-payment of rent, or injury done by cattle. 3 *Bl. Com.* 6, 7. *Co. Litt.* 47. The taking of beasts, or other personal property, by way of pledge, to enforce the performance of something due from the party distrained upon. 3 *Bl. Com.* 231. The taking of a defendant's goods, in order to compel an appearance in court. *Id.* 280. 3 *Steph. Com.* 361, 363. *Gilbert on Rents*, 3, 92. 1 *Crabb's Real Prop.* 224. 3 *Kent's Com.* 461.

The thing or chattel itself, so taken or distrained. *Spelman*, vocc. *Distringere, Districtus. Termes de la Ley.* See *Distringas*.

DISTRESS INFINITE. In English practice. A distress which has no bounds with regard to its quantity, and may be repeated from time to time until the stubbornness of the party is conquered. 3 *Bl. Com.* 231, 280, 281. *Termes de la Ley.* 3 *Steph. Com.* 509. *Fleta*, lib. 2, c. 62, § 4.

DISTRIBUTION. [Lat. *distributio*, from *distribuere*, to distribute.] A dealing or division among several; a dealing in portions or shares; the giving to each of several his or her share.* Commonly used to express the division of the personal effects of an intestate among his widow and children, or next of kin. See *Distribution, Statute of*.

DISTRIBUTIONS, Statute of. The title of the English statute of 22 & 23 Charles II. c. 10, containing provisions for the distribution of the personal estate of an intestate among the widow and children, or next of kin. 2 *Kent's Com.* 420, 437. Statutes of a similar kind in the United States are generally termed *statutes of distribution*.

DISTRICT. [L. Lat. *districtus, districtio*, from *distringere*, to distrain; L. Fr. *destresse*, from *destreindre*, to distrain.] In old law. A circuit or territory within which the power of *distraining*, or other coercive authority, might be exercised. See *Districtio, Districtus*.

In modern law. A portion of territory, (as of a state, county, city or town,) defined by law, within which a certain jurisdiction or authority may be exercised; a civil division of a state or country for judicial or other purposes; any limited extent of territory.

By successive extensions of meaning, this word has gradually lost its original and peculiar signification, and is now constantly used in ordinary language, to denote any extent of territory for any purpose. Its original import is sufficiently pointed out by its etymology; in further illustration of which it may be observed, that the terms *district* and *distress* appear to have been at one time used in English law, to denote the same thing; the former being formed from the Latin, (*districtus*), the latter from the French (*destresse*) form of the word. Thus, it is said in Britton, "if

the vouchee be not within the *distress* [bailiwick] of the sheriff, &c., (*si celuy garraunt ne soit en la destresse le visconte, &c.*) *Britt. c. 120.*

DISTRICT COURTS. In American law. Courts held in each of the thirty-five districts into which the United States are divided, consisting of a single judge, and which act both as courts of common law and also as courts of admiralty. 1 *Kent's Com.* 303—305, 353.

DISTRICATIO. L. Lat. [from *distringere*, to bind, coerce, or distrain; L. Fr. *destresse*.] In old English law. A distress, distraint or distraining. *Districtio—modum non excedat*; distress shall not exceed measure, (shall not be excessive). *Bract. fol. 203 b. Si fiat districtio ubi nulla causa est distringendi*; if a distress be made where there is no cause for distraining. *Id. fol. 217.* See *Id. fol. 440 b. Stat. Marl. c. 4. Magna districtio*; the grand distress. *Fleta, lib. 2, c. 65, § 8.* Said by Lord Coke to mean a strait, (*angustia*), because the cattle distrained are put into a strait or pound. *Co. Litt. 96 a.* But see *Distringere*.

The right of distress. *Districtio semper sequitur fidelitatem*; distress always follows fealty. *Fleta, lib. 3, c. 11, § 1.* See *Id. c. 16, § 37.*

A thing, chattel or animal distrained. *Nullus de cætero faciat ducere districtiones quas fecerit extra comitatum in quo capta fuerint*; no persons henceforth shall cause the distresses which he has made, to be led out of the county in which they were taken. *Stat. Marlbr. c. 4. Id. c. 1. Fleta, lib. 2, c. 62, § 4. Spelman, voc. Distringere.*

A circuit or territory within which the power of distraining might be exercised. *Qui terras—infra districtionem vestram non habent, per quæ—distringi possunt*; who have not lands within your district by which they can be distrained. *Reg. Orig. 6 b. Districtus* (q. v.) was used in the same sense.

Any compulsory proceeding. *In omni actione, ubi duæ concurrunt districtiones, videlicet in rem et in personam, illa districtio tenenda est quæ magis timetur et magis ligat.* In every action, where there are two concurrent distresses, [modes of compulsory proceeding,] namely, against the property and against the person, that distress [proceeding] is to be adopted which is the more feared, and is the more stringent [binds harder]. *Bract. fol. 372.* See *Fleta, lib. 6, c. 14, § 28.*

DISTRICTUS. L. Lat. [from *distringere*, to bind; L. Fr. *destresse*.] In old English law. A distress; a distraint; a district. The place or locality within which the power of distraining might be exercised; (*quicquid loci in quo distringendi potestatem quis habet*). *Spelman.* Hence the English *district*, (q. v.) The phrase, "out of his fee," (Fr. *hors de son fee*), was otherwise expressed, "out of his district," (*extra districtum suum*). *Spelman.*

A person distrained on. *Fleta, lib. 2, c. 49, § 16.*

In feudal law. The power of coercion or distress; the jurisdiction of a magistrate or feudal lord. *Feud. Lib. 1, tit. 5, § 7.*

A place or territory within which such power or jurisdiction might be exercised. *Calv. Lex. Jurid. Id. de Verb. Feudal.*

DISTRINGAS. L. Lat. (You distrain.) In English practice. A writ directed to the sheriff of the county in which a defendant resides, or has any goods or chattels, commanding him to *distrain* (*Præcipimus tibi quod distringas*—, We command you that you distrain;) upon the goods and chattels of the defendant for forty shillings, in order to compel his appearance. 3 *Steph. Com.* 567. This writ issues in cases where it is found impracticable to get at the defendant personally, so as to serve a summons upon him. *Id.*

A *distringas* is also used in equity, as the first process to compel the appearance of a corporation aggregate. *Stat. 11 Geo. IV. and 1 Will. IV. c. 36. Wharton's Lex.*

DISTRINGAS JURATORES. L. Lat. (You distrain the jurors.) In English practice. A process for enforcing the attendance of jurors, which is supposed to be issued after the *venire* to summon them, but in practice is issued at the same time, founded on a supposed and fictitious neglect of the jurors to attend upon the *venire*. It commands the sheriff to distrain them by their goods, so that he may have them before the court in banc on an ulterior day, to try the cause, or (alternatively,) before the court at *nisi prius*, if the judge of *nisi prius* shall first come, on some intervening day specified, into the county where the venue is laid.* 3 *Steph. Com.* 590, 591.

DISTRINGAS NUPER VICE COMITEM. L. Lat. (You distrain the late sheriff.) In practice. A writ issued against a sheriff who had gone out of office before complying with a rule to bring in the body of a defendant, directed to his successor,

commanding him to *distrain the late sheriff* by all his lands, &c., so that he might have the defendant's body in court, to answer the plaintiff. 1 *Tidd's Pract.* 313. It is now obsolete. *Id.* note.

A writ to distrain a sheriff out of office, in order to compel him to sell goods seized under a *feri facias*. *Archb. N. Prac.* 373.

DISTRINGERE. Lat. In feudal and old English law. To distrain; to coerce or compel; literally, to bind fast or strain hard.* *Spelman. Calv. Lex. Jurid. Nec villa nec homo distringatur facere pontes*; nor shall a vill nor a man be distrained to make bridges. *Mag. Cart. 9 Hen. III. c. 15. Id. Johan. c. 23. Constringere* is used in this sense in old writs. *Spelman.*

DISTURBANCE. [L. Lat. *disturbantia, disturbatio.*] A wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. 3 *Bl. Com.* 236. 2 *Crabb's Real Prop.* 1074, § 2472.—The hindering of that which in right belongeth unto one to do. *Finch's Law*, b. 3, ch. 2, p. 187.—The wrongful obstruction of the owner of an incorporeal hereditament in its exercise or enjoyment. 3 *Steph. Com.* 510.

DISTURBANCE OF FRANCHISE. The disturbing or incommoding a man in the lawful exercise of his franchise, whereby the profits arising from it are diminished.* 3 *Bl. Com.* 236. 3 *Steph. Com.* 510. 2 *Crabb's Real Prop.* 1074, § 2472 a. See *Franchise*. As to disturbance of office, see 1 *Crabb's R. P.* 466, § 595.

DISTURBANCE OF COMMON. The doing any act by which the right of another to his common is incommoded or diminished; as where one who has no right of common puts his cattle into the land, or where one who has a right of common puts in cattle which are not commonable, or surcharges the common; or where the owner of the land, or other person, incloses or otherwise obstructs it.* 2 *Bl. Com.* 237—241. 3 *Steph. Com.* 511, 512. 1 *Crabb's Real Prop.* 312, § 348. See *Common*.

DISTURBANCE OF WAYS. The obstructing a person's right of way over another's grounds by enclosures, or other obstacles, or by ploughing across it, by which means he cannot enjoy his right of way, or at least not in so commodious a manner as he is entitled to do.* 3 *Bl. Com.* 241. 3 *Steph. Com.* 513. 1 *Crabb's Real Prop.* 347, § 393. See *Way*. As

to disturbance of the right to water, see 1 *Crabb's R. P.* 372, § 427; of the right to light and air, *Id.* 395, § 462.

DISTURBANCE OF TENURE. The compelling or inducing a tenant at will to leave his tenancy.* 3 *Bl. Com.* 242. 3 *Steph. Com.* 513, 514.

DISTURBANCE OF PATRONAGE. The hindrance or obstruction of a patron from presenting his clerk to a benefice. 3 *Bl. Com.* 242. 3 *Steph. Com.* 514. 2 *Crabb's Real Prop.* 1075, § 2472 d. See *Advowson*.

DIT. L. Fr. [from *dire*, to say or speak.] Said. See *Nest dit*.

A word; a decree. *Kelham.*

DITES OUSTER. L. Fr. Say over. The form of awarding a *respondeas ouster*, in the Year Books. M. 5 Edw. III. 49.

DITTAY. In Scotch law. A criminal information or accusation. 2 *Forbes' Inst.* 242, 362. *Skene de Verb. Signif. voc. Iter.* "Accusait be dittay openly read in judgment." 1 *How. St. Trials*, 926. Articles or points of dittay were the same as indictment. 2 *Forbes' Inst. ub. sup.* 1 *Pitc. Crim. Trials*, part 1, p. 65. See the form in 3 *How. St. Trials*, 436.

DIUTURNITAS. Lat. In old practice. Length of time. *Fleta*, lib. 4, c. 18, § 1.

DIVERSION. [Lat. *diversio*, from *divertere*.] A turning aside. See *Divert*.

DIVERSIS VICIBUS. L. Lat. At different times. *Reg. Orig.* 272. *Hob.* 189 a. *Diversis diebus et vicibus*; at different days and times. 13 *East*, 407.

DIVERSITAS. Lat. [L. Fr. *diversite*.] In old English law. Diversity; difference; unlikeness. *Si in scriptura inveniantur diversitas calami, et diversitas scribendi, et diversa manus*; if in the writing [or instrument] there be found a difference of pen, and a difference of writing, and a different hand. *Bract.* fol. 398 b. *Item diversitas incausti*; also a difference of ink. *Id. ibid.* *Diversitas calami, vel atramenti, vel manus.* *Fleta*, lib. 6, c. 34, § 5. *Diversite de mayn ou de enke, en le scripture.* *Britt.* c. 28.

DIVERSITE DES COURTS. A treatise on courts and their jurisdiction, written in French in the reign of Edward III. as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534. *Crabb's Hist.* 330, 483. 3 *Bl. Com.* 53. 3 *Reeves' Hist.* 152. 4 *Id.* 420. 3 *Steph. Com.* 414.

DIVERSO INTUITU. Lat. With a

different view, purpose or design; in a different view or point of view; by a different course or process. 1 *W. Bl.* 89. *Cas. temp. Hardw.* 132. 9 *East*, 311. 4 *Kent's Com.* 211, note. 1 *Peters' R.* 500. 2 *Gallison's R.* 318. *Story on Bailm.* § 57. See *Alio intuitu*.

DIVERSORIUM. Lat. [from *divertere*, to turn aside.] In old English law. A lodging or inn. *Towns. Pl.* 38.

DIVERT. [from Lat. *divertere*, q. v.] To turn aside; to turn out of the way; to alter the course of things. Usually applied to water-courses. *Angell on Water-Courses*, § 97, et seq. Sometimes to roads. 8 *East*, 394.

DIVERTERE. Lat. In the Roman law. To turn aside; to go away from; to leave. A woman was said *divertere*, who left her husband. *Dig.* 5. 1. 42. *Id.* 9. 2. 27. 30. From *divortere*, an old form of this word, was derived *divortium*, (q. v.)

DIVIDENDA. L. Lat. [from *dividere*, to divide.] In old English law. A thing to be divided. An indenture is so called in old statutes. *Claus. 6 Edw. II. in dors.* m. 24. *Stat. de Escatoribus*, 29 *Edw. I. Cowell.* Because it was to be divided, or cut in two. See *Indenture*.

A part of an indenture. *Stat. 10 Edw. I. c. 11. Stat. 28 Edw. I. st. 3, c. 2. Termes de la Ley.*

DIVINARE. Lat. To divine; to conjecture or guess; to foretell. *Divinatio*; a conjecturing or guessing.

Nemo tenetur divinare. No man is bound to divine; that is, to have foreknowledge of a future event. 10 *Co.* 55. No man is bound to guess at the intention of the parties to an instrument.

Divinatio, non interpretatio est, quæ omnino recedit a litera. That is guessing, not interpretation, which altogether departs from the letter. *Bacon's Max.* 18, (in reg. 3,) citing *Yearb.* 3 *Hen. VI.* 20.

DIVISA, Devisa. L. Lat. [from *Fr. diviser*, to divide.] In old English law. A division or partition. A division or distribution of goods by will; a will or testament of goods or chattels. *Spelman. Cowell. Glanv.* lib. 12, c. 20. *Id.* lib. 7, c. 5. Hence the modern *devise*, now confined to mean a will of lands or disposition of real estate by will. See *Devise*.

A division or boundary between neighboring or adjoining lands, (L. *Fr. devise*, q. v.) such as a highway; a wall, ditch or stream; a stake or stone. *Bract.* fol. 180 b.

As to streams, see *Fleta*, lib. 4, c. 6, § 3. It might also be composed of the land itself, (*fit divisa de consensu vicinorum, ex eorum terra*), in which case it was common to both proprietors, (*et est talis divisa communis inter eos*). *Bract. ub. sup. Id.* fol. 167. The use of strips of unploughed land, as boundaries in open or common fields, still prevails in England. *Stat. 6 & 7 Will. IV. c. 115. Dicitur divisa eo quod dividit agros et tenementa*; it is called *divisa* because it *divides* lands and tenements. *Bract.* fol. 180 b. See *Fleta*, lib. 4, c. 6, § 3. The word was more commonly used in the plural, (*divisæ, or devisæ*), and very frequently in connection with the terms *metæ*, (metes,) and *bundæ*, (bounds,) though not very clearly distinguished from either. *Per metas et divisas. Reg. Orig.* 157 b. *Super bundis et divisis. Id.* 263 b. *Metæ, bundæ et divisæ. Reg. Jud.* 84 b. *Bundæ, et metæ et rationabiles divisæ, quæ ponuntur in terminis agrorum, ad distinguendum prædia et dominia vicinorum*; bounds and metes and reasonable divisions, which are placed in the limits of fields to distinguish the lands and properties of neighbors. *Bract.* fol. 166 b. See *Fleta*, lib. 5, c. 41.

A sentence or decree. *Cowell. LL. Hen. I. c. 9, cited ibid.*

DIVISÉ. L. Lat. Separately. Lord Ellenborough, 15 *East*, 559.

DIVISIM. L. Lat. In old English law. Severally; separately. *Bract.* fol. 47.

DIVISUM IMPERIUM. Lat. A divided empire or jurisdiction; a jurisdiction shared between two tribunals, or exercised by them alternately.* This classic phrase is frequently applied in the books, to the jurisdiction alternately exercised by the courts of common law and admiralty, between high and low water mark, where the sea ebbs and flows; the one having jurisdiction upon the water when it is full sea, and the other upon the land when it is an ebb. *Finch's Law*, b. 2, ch. 1, p. 78. 5 *Co.* 107. 1 *Bl. Com.* 110. *Molloy de Jur. Mar.* 231. 1 *Kent's Com.* 366. It is applied also to the jurisdiction exercised by courts of common law and equity, over the same subject. 4 *Steph. Com.* 9.

DIVORCE. [Lat. *divortium*, from *divertere*, (anc. *divortere*), to turn away, to separate; L. *Fr. divorce, devors*.] The separation of husband and wife by the sentence of the law.* *Shelford, Mar. & Div.* 363.—The lawful separation of husband

and wife, made before a competent judge, on due cognizance had of the cause, and sufficient proof made thereof. *Ayliffe's Parergon*, 225. See *Godolph. Abr.* 493. —The dissolution of the marriage contract by law, either totally, (*à vinculo matrimonii*), or partially, (*à mensa et thoro*).* 1 *Bl. Com.* 440, 441. 2 *Steph. Com.* 310, 311. 2 *Kent's Com.* 95, *et seq.* See *infra*.

The word *divorce* appears to be framed partly from the original Latin *divortium*, and partly from the old French form *devorce* or *devors*. *Divorce* is used by Littleton. According to Lord Coke, it is so called from *divertendo*, (turning away,) because a man is thus *turned away* from his wife; (*divortium dicitur à divertendo, vel divortendo, quia vir divertitur ab uxore*). *Co. Litt.* 235. The derivation given in the civil law illustrates the facility with which the Roman divorces were allowed. *Divortium vel à diversitate mentium dictum est, vel quia in diversas partes eunt qui distrahunt matrimonium*; divorce is so called either from *diversity* of minds, or because they who break off marriage go *different ways*. *Dig.* 24. 2. 2. It is worthy of remark that, of the two great writers on the ancient law of England, Britton defines divorce to be nothing more than a separation of the bed; (*devorce nest autre chose que severaunce de lyt parentre espous et espouse*), while Bracton makes a clear distinction between the two. *Britt.* c. 107. *Bract.* fol. 92 b. See *Divortium*.

DIVORCE A VINCULO MATRIMONII. A divorce from the bond of marriage. A total divorce of husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations. 1 *Bl. Com.* 440. 2 *Steph. Com.* 310, 311. *Shelford, Mar. & Div.* 363, *et seq.* 2 *Kent's Com.* 95.

DIVORCE A MENSA ET THORO. A divorce from table and bed, or from bed and board. A partial or qualified divorce, by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. 1 *Bl. Com.* 440. 3 *Id.* 94. 2 *Steph. Com.* 311. *Shelf. Mar. & Div.* 363, 364. 2 *Kent's Com.* 125. Called by Bracton *separatio thori*. *Bract.* fol. 92 b. By the recent statute 20 & 21 Vict. c. 85, § 7, no divorce can in future be granted *à mensa et thoro*, but a decree of judicial separation is to be pronounced, having the like effect.

DIVORTIUM. Lat. [from O. Lat. *di-*

vortere, to turn aside.] In the civil and old English law. Divorce; a separation of husband and wife; a going different ways, (*in diversas partes*). *Dig.* 24. 2. Distinguished from *repudium*, (q. v.) *Id.* 50. 16. 191. *Tayl. Civ. Law*, 349. See *Divorce*. *Divortium sine causa*, or *sine ulla querela*; a divorce without cause, or without any complaint. 2 *Kent's Com.* 102.

Bracton appears to use *divortium* only to denote a separation *à vinculo*, or total divorce, as distinguished from a *separatio thori*. *Bract.* fol. 92 b.

DIXIEME. Fr. Tenth; the tenth part. *Ord. Mar.* liv. 1, tit. 1, art. 9.

In old French law. An income tax payable to the crown. *Steph. Lect.* 359.

TO DO. This word was sometimes used in old law, in the sense of *to make*; both being translations of the Lat. *facere*, (q. v.) Thus, "to do law" and "to make law," signified the same thing. See *To make*. So the expression "we do you to wit," occurs as the translation of *scire facimus*, (we make you to know, or give you to understand).

DO. Lat. I give. The ancient and aptest word of feoffment and of gift. 2 *Bl. Com.* 310, 316. *Co. Litt.* 9. Used by Bracton in all his examples and illustrations of conveyances. *Bract.* fol. 17, *et passim*. See *Fleta*, lib. 3, c. 9. Probably the most ancient term of conveyance.

DO, LEGO. Lat. I give, I bequeath; or, I give and bequeath. The formal words of making a bequest or legacy, in the Roman law. *Titio et Seio hominem Stichum do, lego*; I give and bequeath to Titius and Seius, my man Stichus. *Inst.* 2. 20. 8, 30, 31. The expression is literally retained in modern wills. According to Calvin, who quotes Spiegelius, either of these words separately imports as much as both together. *Calv. Lex. Tayl. Civ. Law*, 240.

DO UT DES. Lat. I give that you may give; I give [you] that you may give [me]. A formula in the civil law, constituting a general division under which those contracts (termed *innominate*) were classed, in which something was given by one party as a consideration for something given by the other. *Dig.* 19. 4. *Id.* 19. 5. 5. 2 *Bl. Com.* 444. I give you money, on a contract that you shall give me goods, and *è converso*;—the contract of purchase and sale. I give you goods, in consideration of your giving me other goods;—the contract of exchange or barter. I give you

money now, in consideration or on condition of your giving it to me hereafter;—the contract of loan of money.* *Id. Cooper's Justin. Inst. Notes*,* 584. Bracton's example shows his familiarity with the civil law. *Do tibi digestum*, ut des mihi *codicem*; I give you a digest, that you may give me a code. *Bract. fol. 19. See Do ut facias.*

DO UT FACIAS. Lat. I give that you may do; I give [you], that you may do or make [for me]. A formula in the civil law, under which those contracts were classed, in which one party gave or agreed to give money, in consideration the other party did or performed certain work. *Dig. 19. 5. 5. 2 Bl. Com. 444. Do tibi codicem*, ut facias mihi scribi *digestum*; I give you a code, that you may have a digest written (or copied) for me. *Bract. fol. 19.*

The particle *ut*, in this and the foregoing phrase, is considered as denoting or expressing a consideration; so much, that Blackstone has treated them as forms of consideration. *2 Bl. Com. ub. sup.* Strictly, however, *ut* denotes what the civilians called *modus*, (qualification); *quia* being the particle employed to denote what they called *causa*, which is generally translated consideration. *Bract. fol. 18 b. See Consideration, Causa.* Britton calls these phrases or formulæ, *conditions*, and repeats them after Bracton; but the passage in the original edition is much corrupted. *Britt. c. 36. See Jeo done.*

DO, DICO, ADDICO. Lat. I give, I say, I adjudge. Three words used in the Roman law, to express the extent of the civil jurisdiction of the prætor. *Do* denoted that he gave or granted actions, exceptions and judices, (*prætor dabat actiones, exceptiones, judices*); *dico*, that he pronounced judgment, (*dicebat jus*); *addico*, that he adjudged the controverted property, or the goods of the debtor, &c. to the plaintiff. *1 Mackeld. Civ. Law, 187, Kaufmann's note. Id. 24, § 35, note (b). Calv. Lex. Jur.*

DOAIRE. L. Fr. Dower. *Fet Assaver, § 21.*

DOARIUM, Douarium, Dodarium, Dotarium, Dotalitium. L. Lat. Dower. The use of these words is entirely confined to the early continental law of Europe, although, according to Spelman, they are the proper Latin equivalents of the English word *dower*; *dos*, (the term employed by all the English writers since Bracton to signify dower,) denoting properly quite a

different thing. *Spelman. 2 Bl. Com. 129. See Dos, Dower.*

Doarium is mentioned in the early law of France, as the popular term for dower, or a widow's portion of her husband's estate. *Spelman. Calv. Lex. Jur. Douarium* occurs in the history of Bretagne in a similar sense. The latter word, sometimes inaccurately written *donarium*, comes very near the form of the English word *dower*. Both *doarium* and *douarium* are from the Fr. *douaire*, which seems also to be the root of the English word. *Dower* occurs in its present form in the Law French of Britton. *Britt. c. 101.*

DOAYRE. L. Fr. Dower. *Fet Assaver, § 47.*

DOCERE. Lat. In the civil and old common law. To show; to set forth; to make out a case by proper statements. *Cum querens*—docuit *tenementum esse suum, tenens, si possit, doceat*, &c.; when the plaintiff has shown [by his count or declaration,] the tenement to be his, the tenant if he can, may show, &c. *Bract. fol. 209. See Fleta, lib. 4, c. 7, § 2.*

To show or establish by proof. *Et hoc paratus est docere*; and this he is ready to show, or verify. *Bract. fol. 216 b.*

DOCK. In criminal practice. An enclosed place in criminal courts, occupied by prisoners when brought in for trial.

DOCK. The space between wharves. *Grier, J. 17 Howard's R. 434.* A space in a harbor, river, &c., enclosed between two wharves.

DOCKET, *Docquet, Dogget.* In practice. A brief or abstract in writing. *Cowell.* An abridged entry of an instrument, or proceeding in an action; a list or register of such abridged entries.

An abridged entry of a judgment; an entry made in a proper book, by the clerk of the court in which a judgment is recovered, containing an abstract of the judgment, that is, the title of the cause, amount of the judgment, time of the recovery, attorneys' names, &c. *3 Bl. Com. 397, 398. 2 Tidd's Pr. 939.* It is an index to the judgment. *Id. ibid.*

The list or calendar of causes ready for hearing or trial, prepared by clerks for the use of courts, is, in some of the United States, called a *docket*. In England, the entry made in the docket book at the bankrupt office, on delivery of a petitioning creditor's affidavit and bond, is called *striking a docket*. *Eden's Bankr. Law, c. 4. sect. 1.*

In the old definitions, a docket is said to be "an abridged entry on a *small piece* of paper or parchment;" or "a small piece of paper or parchment containing the effect of a larger writing." *Cowell*, citing *West's Symbol.* part 2, tit. *Fines*, sect. 106. The word, however, was used as far back as the statute 4 & 5 W. & M. c. 20, (A. D. 1692), by which the docketing of judgments was first regulated, in the sense of an abridged entry in a book, which is its usual modern meaning. It is written *dogget* by *West*, (*ub. sup.*) and in the English statute just referred to. See the statute at large in *Miller's Law of Equitable Mortgages*, Appendix, No. I.

To DOCKET, *Docquet*, *Dogget*, *Doquet*. In practice. To abstract and enter in a book. 3 *Bl. Com.* 397, 398. To make an abridged entry of a judgment, or other proceeding in a book kept for that purpose.* See *Docket*.

Dogget is the word used in the statute 4 & 5 W. & M. c. 20. *Doquet* is used by *Bacon Works*, iv. 143. *Docquet* is used by *Blackstone*, (*ub. sup.*) *Docket* is the modern form. *Townsend* gives some curious old forms of *doggetting* causes. *Towns. Pl.* 159—162.

DOCTOR AND STUDENT. The title of a work written by *St. Germain*, in the reign of *Henry VIII.* in which many principles of the common law are discussed in a popular manner. It is in the form of a dialogue between a Doctor of Divinity and a Student in Law, and has always been considered a book of merit and authority. 1 *Kent's Com.* 504. *Crabb's Hist. Eng. Law*, 482.

DOCTORS' COMMONS. The popular name of the courts and offices occupied by the body incorporated in England, in 1768, under the title of "The College of Doctors of Law, exercent in the ecclesiastical and admiralty courts;" and which are situated on the southern side of *St. Paul's churchyard*, London. It is a college consisting of a president, (the Dean of the Arches for the time being) and of those doctors of laws, who, having regularly taken that degree in either of the universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected fellows of the college in the manner prescribed by the charter. *Wharton's Lex. Brande.*

DOCUMENTS. [Lat. *documenta*, from

docere, to show.] Written instruments adduced for the purpose of *showing* or *proving* a claim or title, or other matter in controversy; evidences of title.* See *Documentum*. This term was anciently applied, in particular, to the evidences of title to real property, or muniments of title, (*quibus jus prædiorum firmatur*;) and otherwise called *telligrapha*. *Spelman*. See *Telligraphum*.

Documents are a species of instruments of evidence, and, according to a modern writer on evidence, "properly include all material substances on which the thoughts of men are represented by any species of conventional mark or symbol. Thus, the wooden score on which a baker and his customers indicate by notches the number of loaves of bread supplied, the old exchequer tallies, and such like, are documents as much as the most elaborate deed." *Best on Evid.* 238.

DOCUMENTUM. Lat. [from *docere*, to show.] In the civil law. A document; an instrument; (*instrumentum*; Gr. *σφολατον*.) *Nov.* 119, c. 3. See *Gloss.* in loc.

DODARIUM. L. Lat. [from Lat. *dos*, q. v.] In old European law. Dower. Used in this sense in *Hoveden*, cited in *Spelman*, voc. *Doarium*. The same as *dotarium*, (q. v.) See *Doarium*.

DODKIN. See *Doitkin*.

DODRANS. Lat. In the Roman law. A subdivision of the *as*, containing nine uncia; the proportion of nine-twelfths, or three-fourths. 2 *Bl. Com.* 462, note. *Tayl. Civ. Law*, 492.

DOER. In Scotch law. An agent or attorney. 1 *Kames' Equity*, 325.

DOET. L. Fr. Ought; he ought; owes. *L. Fr. Dict.*

DOG-DRAW. In forest law. Drawing after, (that is, pursuing) a deer with a dog. One of the circumstances which constituted what was called the manifest apprehension of an offender against venison in a forest; that is, his being caught in the act of committing the offence, or taken with the mainour, as it was otherwise called.* *Manwood*, part 2, c. 8. See *Mainour*.

DOGGET. See *Docket*.

DOIGNE, *Doyne*. L. Fr. Give; given; I give. *Britt.* c. 36. *Kelham*. See *Done*.

DOING. [L. Lat. *faciendo*, *faciendum*.] The formal word by which services were reserved and expressed in old conveyances; as "rendering," (*reddendo*) was expressive of rent. *Perk.* ch. 10, sect. 625, 635, 638.

DOIT, Dovit. L. Fr. He or it ought; he owes. *Doient, doyent*; they ought. *L. Fr. Dict. Kelham.*

DOITKIN, Dotkin, Dodkin. A foreign coin of small value, prohibited by statute 3 Hen. V. c. 1, from being introduced into England. *Crabb's Hist. Eng. Law*, 357. 3 *Reeves' Hist.* 261. 4 *Bl. Com.* 99. According to Mr. Crabb, it was the Dutch *duitkin*, of the value of two penningens.

DOL. Fr. [from Lat. *dolus*.] In French law. Evil or malicious design; deceit; fraud. See *Dolus*.

DOLE. [L. Lat. *dola*, Sax. *dæl*; from *dalan*, to divide, or distribute.] In old English law. A part or portion. *Spelman*. Dole-meadow was one in which several persons had a share. *Cowell*.

DOLE. Sc. [from Lat. *dolus*.] In Scotch law. Criminal intent; evil design. *Bell's Dict. voc. Crime*.

DOLG. Sax. A wound. *Spelman*.

DOLI CAPAX. Lat. Capable of mischief or criminal intention; of the age of discretion; capable of distinguishing between good and evil. A phrase derived from the civil law, in which it was used in defining the liability of infants to punishment for crimes. *Dig.* 29. 5. 14. *Id.* 50. 17. 111. *Id.* 47. 2. 23. 1 *Bl. Com.* 464. 4 *Id.* 22. According to Bracton, a female is more *doli capax* than a male, as arriving sooner at maturity. *Bract.* fol. 86 b.

DOLI INCAPAX. Lat. Incapable of criminal intention; not of the age of discretion. 4 *Bl. Com.* 22, 23.

DOLIUM. L. Lat. In old English law. A tun. 2 *Ld. Raym.* 1468. A hogshead. *L. Lat. Dict.* *Fleta* describes it as containing fifty-two sextaries of four gallons each. *Fleta*, lib. 2, c. 12, § 71.

DOLO. Span. [from Lat. *dolus*, q. v.] In Spanish law. Bad or mischievous design. *White's New Recop.* b. 1, tit. 1, c. 1, § 3.

DOLUS. Lat. [Fr. *dol*; Span. *dolo*; Sc. *dole*.] In the civil law. Deceit; fraud. Otherwise called *dolus malus*, (q. v.) *Fraud* is the word most commonly used to define this term, but *deceit* appears to be the more strictly accurate expression. The civilians drew various distinctions between *dolus* and *fraus*, some of which seem to be still recognized; making the essence of the former to be the intention to deceive, while the latter imported actual damage or detriment. *Calv. Lex. Jur.* 2 *Kent's Com.* 560, note. Mr. Justice Story thinks it

questionable whether *dolus* was used in the Roman law in the intense sense of the word *fraud*, (that is intentional fraud,) in our law. *Story on Bailm.* § 20 a. See *Broom's Max.* [573.] Strictly, it was a *vox media*, a word of middle or indifferent signification, and to be determined by its adjunct or other circumstance. *Tayl. Civ. Law*, 118. See *Dig.* 4. 3. 3. *Grot. de Jur. Bell.* lib. 3, c. 1, §§ 7, 8. In Scotch law, it is translated by a word framed immediately from the Latin, viz. *dole*, (q. v.)

Design; evil or criminal intention; malice. *Si dolo aut culpa homo occisus fuerit*; if a man have been killed through design or carelessness. *Inst.* 4. 3. 14. See *Doli capax*.

Dolus versatur in generalibus. Fraud deals in generalities. 2 *Co.* 34 a. 3 *Id.* 81 a. Otherwise expressed, *Dolosus versatur in generalibus*. A person intending to deceive deals in general terms. *Wingate's Max.* 636, max. 165. *Broom's Max.* 321, [216].

Dolus ciremitu non purgatur. Fraud is not purged by circuitry. *Bacon's Max.* 4. *Broom's Max.* [170].

Dolus et fraus nemini patrocinentur, (patrocinari debent). Deceit and fraud shall excuse or benefit no man. *Yearb.* 14 Hen. VIII. 8. *Best on Evid.* 469, § 428. 1 *Story's Equity Jur.* § 395.

Lata culpa dolo equiparatur. Gross negligence is tantamount to fraud, (or evil design). See *Culpa*.

DOLUS MALUS. Lat. In the civil law. Fraud; evil design; the intentional endeavoring to injure another by fraudulent delusion, or other unlawful means.* Defined in the Digests, after Labeo, to be—*omnem calliditatem, fallaciam, machinationem ad circumveniendum, fallendum, decipiendum alterum adhibitam*; (every kind of craft, deceit and contrivance used to circumvent, deceive and mislead another). *Dig.* 4. 3. 1. 2. So called to distinguish it from *dolus bonus*, (justifiable deceit,) which was allowed in certain cases, as in self-defence against an unlawful attack. *Id.* 4. 3. 1. 3. 1 *Mackeld. Civ. Law*, 165, § 166. *Calv. Lex. Jurid.*

Ex dolo male non oritur actio. Out of fraud no action arises. Lord Mansfield, *Cowp.* 341—343. A right of action cannot arise out of fraud. No contract can arise out of a fraud; and an action brought upon a supposed contract, which is shown to have arisen from fraud, may be resisted.

Broom's Max. 349, [571]. *Dolo malo ait prætor pactum se non servaturum.* The prætor says that he will not uphold an agreement founded in fraud. *Dig.* 2. 14. 7. 9.

DOM. Sax. Judgment. Hence the English *doom*. See *Dome*.

DOM. PROC. An abbreviation of *Domus Procerum*, or *Domo Procerum*; the House of Lords in England. Sometimes expressed by the letters D. P. *Sugden's Law of Prop. passim*.

DOMAIN. [L. Lat. *domanium*, *de-manium*.] Ownership of land, (*fundi proprietates*). *Spelman*. Immediate or absolute ownership; paramount or ultimate ownership.* The inherent sovereign power claimed by the legislature of a state, of controlling private property for public uses, is termed the right of *eminent domain*. 2 *Kent's Com.* 339.

An estate or patrimony which one has in his own right, (*quod quis proprio suo jure possidet*). *Spelman*. The same with *dominicum*, (q. v.) *Id.* Land of which one is the absolute owner.* The public lands of a state are frequently termed the public *domain*, or *domain* of the state. 1 *Kent's Com.* 166, 259. 2 *Id.* 339, note.

DOMBEC, *Domboc*. Sax. [from *dom*, judgment, and *bec*, *boc*, a book.] *Dome-book* or *doom-book*. A name given, among the Saxons, to a code of laws. Several of the Saxon kings published *dombocs*, but the most important one was that attributed to Alfred. *Crabb's Hist.* 7. 1 *Bl. Com.* 64. This is sometimes confounded with the celebrated *Domesday book*. See *Dome-book*, *Domesday*.

DOME, *Doom*. [Sax. *dom*.] In old English law. Judgment or sentence. "So help me God at the holy *dome*, and by this book." The oath of a juror, mentioned in the Black Book of the Admiralty. *Molloy de Jur. Mar.* 104. "So help me God at his holy *dome*, and by my trowth." The homager's oath in the Black Book of Hereford. *Blount*.

In old Scotch law. Judgment; sentence; doom. 1 *Pitc. Crim. Trials*, part 2, p. 30. See a form of dome of forfeiture. *Id.* part 1, p. 132; part 2, p. 8. The reversal of judgment or sentence was called *falsing of domes*. *Cowell*, voc. *Domesmen*. In criminal cases, the *dome* was pronounced by an officer of the court called *dempster*, or *doomster*. 1 *Hov. St. Trials*, 927. See *Dempster*. It con-

cluded with the words, "And this I give for dome," [doom].

DOME-BOOK. [Sax. *dombec*; Lat. *liber judicialis*.] A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England; containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanours, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV. but is now lost. 1 *Bl. Com.* 64, 65. This is stated by Blackstone on the authority of the early English historians, though Mr. Hallam considers their authority insufficient to establish the facts. 2 *Hallam's Middle Ages*, 402, (7th ed.) 1 *Steph. Com.* 41, 42.

DOMESCHE. L. Fr. Tame; domesticated. *Britt.* c. 24.

DOMESDAY, *Doomsday*, *Domesdei*. [from *dome* or *doom*, judgment, and *day*. See *infra*.] An ancient English record, made in the time of William the Conqueror, and by his command, containing the details of a great survey of the kingdom, including all the demesne lands of the crown, and completed A. D. 1086, or 1087. It consists of two volumes, a greater and a less; the greater containing a survey of all the lands in England, (embracing thirty counties,) except the counties of Cumberland, Northumberland, Durham, and a part of Lancashire, which were not surveyed, and also Essex, Norfolk and Suffolk, which are comprehended in the lesser volume. 2 *Bl. Com.* 49, 99. *Spelman*, voc. *Domesdei*. *Cowell*. *Blount*. *Ducange*. *Crabb's Hist.* 52, 53. The original Domesday book is still in existence, fair and legible, and is preserved in the Chapter House at Westminster. It was formerly kept with great care in the Exchequer, under three locks. *Spelman*. It is now printed, (its publication having been commenced in 1767, and completed in 1783,) and copies may be found in public libraries in this country, but being in the Latin of the times, with numerous contractions and abbreviations, its perusal is a work of very considerable difficulty.

* * This venerable record, which *Spelman* calls *monumentum totius Britanniae absque controversia augustissimum*, was anciently known in Latin by various names, all indicating the general object of its compilation; as *Liber Judiciarius*, (the judg-

ment book), *Censualis Angliæ*, (the tax book of England), *Angliæ Notitia et lustratio*, (the survey of England), *Rotulus Regis*, (the king's roll); *Rotulus* or *Liber Wintoniæ*, (the roll or book of Winchester). The English term *Domesday* appears to be compounded of *dome* or *dom*, (Sax. judgment,) and *day*, the precise meaning of which has been a matter of some doubt. Cowell supposes that it was made a part of the word, not with any allusion to the final day of judgment, but to double and confirm the meaning; *day* having itself, in fact, the same meaning as *dome*, that is, judgment. *Cowell*, voc. *Daysman*. But that the idea of the day of judgment did enter into the original composition of the word, seems clear from the testimony of the old chroniclers, who have taken some pains to explain it. In the Black Book of the Exchequer, it is said that this book is called by the native English *domesdei*, that is, the day of judgment, by a figure. (*Hic liber ab indigenis Domesdei nuncupatur, id est, dies iudicii, per metaphoram.*) For as the sentence of that last severe and terrible ordeal cannot by any artifice be escaped, so where a controversy has arisen in the kingdom on subjects noticed in that book, and an appeal is made to it, its sentence can neither be impugned nor evaded with impunity. *Lib. Nig. Scacc.* par. 1, cap. antepenult. Again, Ingulphus has recorded that this roll was called by the English *Domesday*, from its comprehensiveness, embracing all the lands of the whole kingdom completely. (*Iste rotulus—ab Anglicis, pro sua generalitate, omnia tenementa totius terræ integrè continente, Domesday cognominatur.*) *Ingulphus*, cited in *Spelman*. These accounts of the origin of the word, given by writers nearly contemporary with the compilation of *Domesday* itself, are very forcibly expressive of the feelings with which this great survey of the Conqueror was regarded by the native population (or *indigenæ*) of England; the searching minuteness of its details, and its overwhelming authority as a record, suggesting to the unlettered mind of the age a comparison with the dread book of final doom itself.

This great census appears to have been compiled in the following manner: The king sent five of his justices into every shire, to make the requisite inquiries by the oaths of persons living on the spot, (*per provincialium iurajuranda*). These

persons, who are called *taxatores*, (assessors) were chosen from every neighborhood, and gave a particular description of their several districts, with estimates of value. Hence the unequalled minuteness of the survey, rendering almost literally true the words of Ingulphus, that there was not a hide of land in England but the king knew its value, and its owner's name, nor a pool nor a place (*nec lacus nec locus*.) that was not described in the king's roll, with its rent and income. *Ingulph. Hist. Croyl.* cited in *Spelman. Termes de la Ley*.

The following sketch of the general plan of *Domesday* may serve to give some idea of its completeness as a census of England. It contains a description, not only of each county, rape, lathe, hundred or wapentake, but even the smaller divisions, cities, boroughs, towns, castles, manors. Mention is made of the quantity of land in each case, by the carve and acre, specifying not only whether demesne or tenemental, but its quality, as whether arable, meadow, pasture, wood, fishery, marsh, common, &c., and sometimes how much live stock, as sheep, hogs, &c., was raised upon it: how many men each manor supported, and their condition, whether knights, husbandmen, laborers, slaves, (giving the distinctive names then used): what was the present value of its income, or what it paid as tax tribute, rent, services and customs; and what these were in the time of Edward the Confessor. This last feature of *Domesday* has probably led to the singular mistake of Fitzherbert and Coke, that it was compiled in the time of St. Edward. *F. N. B.* 16, D. 3 Co. pref. vii.

DOMESMEN. [*Lat. homines judicarii.*] In English law. Men appointed to *doom*, i. e. to determine or pronounce judgment in suits and controversies; an inferior kind of judges anciently so called. *Cowell*. See *Dome*.

Suitors in a court of a manor in ancient demesne, who were the judges there. *Termes de la Ley*.

DOMESTE. L. Fr. [*L. Lat. domitus.*] Tame; domesticated. *Stat. West.* 1, c. 20. See *Domesche*.

DOMESTIC ATTACHMENT. A species of attachment against absent and absconding debtors, being a remedy against *resident* debtors absenting or concealing themselves, as *foreign* attachment is against *non-residents*. 20 *Penn. St. R.* 144. See

2 *Kent's Com.* 403, notea. See *Attachment, Foreign attachment.*

DOMESTIC BILL OF EXCHANGE.

A bill of exchange drawn on a person residing in the same state with the drawer; or dated at a place in the state, and drawn on a person living within the state. 25 *Mississippi R.* 143. It is the residence of the drawer and drawee which must determine whether a bill is domestic or foreign. *Id. ibid.* See *Inland bill of exchange, Foreign bill of exchange.*

DOMESTICUS. Lat. In old European law. A seneschal, steward or major domo. *Spelman.*

A judge's assistant; an assessor. *Id.*

DOMICELLA. L. Lat. In old English law. A damsel. *Fleta*, lib. 1, c. 20, § 80.

DOMICELLUS. L. Lat. [dimin. of *dominus*.] In old European law. A young lord. A title anciently given to the king's (natural) sons in France, and sometimes to the eldest sons of noblemen there. *Spelman. Blount.* *Spelman* says it answered to the Saxon *Adeling, Aetheling.*

DOMICIL, Domicile. [Lat. *domicilium*, from *domus*, house or home, and *colere*, to keep.] The place where a person has his home. A residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.* 1 *Binney's R.* 349, note. This is the definition adopted by Dr. Phillimore, in preference to any of those given by the foreign publicists. *Phillimore on Domicil*, chap. ii. Domicil, he observes, answers very much to the common meaning of our word *home*, and where a person possessed two residences, the phrase *he made the latter his home* would point out that to be his domicil. *Id.*—The place where a person lives, or has his home; the place where he has his true, fixed, and permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning. *Story's Conflict of Laws*, § 41. See 2 *Kent's Com.* 430, note. Marshall, C. J. 8 *Cranch*, 253. 27 *Mississippi R.* 704.—The place in which a person has taken up his permanent residence. 1 *Mackeld. Civ. Law*, 142, § 136.—The place where a man carries on his business, or professional occupation, and has his home or permanent residence. 27 *Mississippi R.* 704. Where a party has two residences at different seasons of the year, that will be esteemed his domicil which he himself selects or describes or

deems to be his home, or which appears to be the centre of his affairs, or where he votes, or exercises the rights and duties of a citizen. *Id. ibid.*

Residence, combined with intention, constitutes a domicil. 2 *Kent's Com.* 430, notea. Residence alone is not sufficient. The domicil may be in one state, and the actual residence in another. 19 *Wendell's R.* 11. The apparent or avowed intention of residence, and the manner of it, constitute domicil. 27 *Mississippi R.* 704. As to the evidence of intention, see *Id. ibid.* So, in regard to *change* of domicil, mere intention to remove without actual removal, avails nothing; nor does mere removal, without a fixed intention of acquiring a new domicil. 2 *Maryland R.* 186. In New-York, a person may be a non-resident of the state, within the meaning of the statute relative to non-resident debtors, while his domicil continues within the state. 1 *Selden's R.* 422, 423. See *Residence, Resident.* And see generally, as to domicil, *United States Digest, Domicil.*

DOMICIL OF ORIGIN. [Lat. *domicilium originis, vel nativitatis.*] The home of the parents. *Phillimore on Domicil*, 25, 101. That which arises from a man's birth and connections. 5 *Vesey, Jr.* 750. The domicil of the parents at the time of birth, or what is termed the domicil of origin, constitutes the domicil of an infant, and continues until abandoned, or until the acquisition of a new domicil in a different place. Marshall, C. J. 1 *Brock. R.* 389, 393. See 5 *Metcalf's R.* 587. As to the change of the domicil of origin into the domicil of choice, see 14 *Howard's R.* 423.

DOMICILIUM. Lat. Domicil; residence. See *Domicil.* *Si in comitatu plura habeat domicilia, potius fiat ei summonitio ad domicilium ubi magis habitaverit, vel ubi majorem habuerit substantiam.* If he have several residences in the county, he should be summoned at the residence where he dwells most of the time, or where he has the largest estate. *Bract.* fol. 333 b.

DOMINA. L. Lat. In old English law. Lady; a lady. *Bract.* fol. 116 b.

DOMINANT TENEMENT. In civil and Scotch law. A term used in the constitution of servitudes, meaning the tenement or subject in favor of which the servitude is constituted. *Bell's Dict.*

DOMINATIO. L. Lat. In old English law. Lordship. *Mem. in Scacc. R.* 22 *Edw. I.*

DOMINICA PALMARUM. (*Dominica in ramis palmarum.*) L. Lat. In old English law. Palm Sunday. *Towns. Pl.* 131. *Cowell. Blount.*

DOMINICUM. L. Lat. [from *dominus*, lord, master.] In old English law. Demesne, demain or domain. That of which one is lord or master; that of which one has the exclusive control, (*de quo quis facere voluntatem suam potest*).^{*} Applied to the estate both of a feudal lord and his tenant.

A lord's own land or estate, (*patrimonium domini*); that portion retained in his own possession or control, as distinguished from that which was granted out to tenants; the former being said to be held in *dominio*, the latter in *servitio*. *Bract.* fol. 263. Land held in villeinage, however, was considered as *dominicum*, the lord having the right to resume its possession at any time. *Id. ibid.* So was land let for a term of years. *Spelman.* See *infra*.

That portion of a lord's lands which was reserved for his own special use, as for the supply of his table, and the maintenance of his family. *Bract. ub. sup.* *Fleta*, lib. 5, c. 5, § 18. See *Demesne*. *Spelman* cites Choppinus (lib. 1, tit. 1, § 6) for the use of the word *domanium* in the old French law, in this sense, and traces its origin to *dominus*, the master or giver of an entertainment, in the Roman writers.

The estate which a free tenant (*liber tenens*,) had in the land, fee, or tenement held by him of his lord. It was not the lord's fee in demesne, but the tenant's; the lord had nothing in the fee but the service; it was the tenant's fee in demesne, and the lord's fee in service. (*Dominus nihil habet in feodo nisi servitium; et sic erit feodum tenentis* in dominico, *et feodum domini in servitio*.) *Bract.* fol. 46 b. That is, the lord could not, (so long as homage and service were rendered him,) interfere with the tenant's possession, nor prevent him from doing as he pleased with the tenement itself. He could not even prevent him from aliening it to another person, unless the tenant were expressly restrained from so doing by the terms of the original conveyance (*in ipsa donatione*). *Id. ibid.* and fol. 45 b, 46. The tenant in fact was *dominus*, in the sense of master, he had the exclusive control of the fee; the *dominicum* was in him, and not in the lord. Hence *dominicum* came to signify that in which one had a free tenement (*liberum tenemen-*

tum) or freehold, and it made no difference whether another was in actual possession of the land as lessee for a term of years, as guardian, or the like. *Bract.* fol. 263. See *Id.* fol. 143 b, 209. *Fleta*, lib. 2, c. 50.

DOMINICUM ANTIQUUM. L. Lat. In old English law. Ancient demesne. *Bract.* fol. 369 b.

DOMINICUS. L. Lat. [from *dominus*, lord.] In old European law. Of, or belonging to the king or lord. *Dominicum bannum*; the lord's ban, the sovereign's edict. *Spelman.* *Dominici coloni*; those tenants who were bound to cultivate their lord's lands; *ascriptitii*, socmen. *Id.* See *Ascriptitii*. *Dominica curtis*; the lord's court. *Id.*

DOMINION. [Lat. *dominium*, q. v.] Ownership, or right to property. 2 *Bl. Com.* 1. "The holder has the dominion of the bill." Lord Ellenborough, 8 *East*, 576.

Sovereignty or lordship; as the dominion of the seas. *Molloy de Jur. Mar.* 91, 92.

DOMINIUM. Lat. [from *dominus*, lord or master.] In the civil and old English law. Ownership; property in the largest sense, including both the right of property and the right of possession or use. *De acquirendo rerum dominio*, (of acquiring the ownership of things) is the title of Bracton's second book; borrowed, doubtless, from the second book of Justinian's Institutes, or the forty-first book of the Digests. Bracton employs also the plural *dominia*. Blackstone uses *dominium* as a synonyme of *dominicum*, in which he is sustained by *Spelman*. 2 *Bl. Com.* 105. But see the next definition.

The mere right of property, as distinguished from the possession or usufruct. *Dig.* 41. 2. 17. 1. *Calv. Lex. Jur.* The right which a lord had in the fee of his tenant. In this sense the word is very clearly distinguished by Bracton from *dominicum*, as in the following passage: *Nihil habuit in dominico nisi nudum dominium, s. homagium et servitium*; (he had nothing in demesne except the naked property, that is, homage and service.) *Bract.* fol. 27.

The estate of a feoffee to uses. "The feoffees to use shall have the *dominium*, and the *cestui que use*, the disposition." *Dodridge, J. Latch*, 137.

Sovereignty or dominion. *Dominium maris*; the sovereignty of the sea.

A lordship. *Towns. Pl.* 20.

DOMINIUM DIRECTUM. Lat. In the civil law. Strict ownership; that which was founded on strict law, as distinguished from equity. 1 *Mackeld. Civ. Law*, 267, 268, Kaufmann's note.

In later law. Property without use; the right of a landlord. *Tayl. Civ. Law*, 478.

In feudal law. Right or proper ownership; the right of a superior or lord, as distinguished from that of his vassal or tenant. *Id. ibid. Butler's Co. Litt.* Note 77, lib. 3. The title or property which the sovereign in England is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount. *Prædium domini regis est directum dominium, cujus nullus est author nisi Deus*; the estate of the king is right ownership, of which none but God is the source. *Co. Litt.* 1 b. 2 *Bl. Com.* 105.

Allodial property; that which is held of no superior. This phrase is used in this sense by Blackstone, who superadds the epithet *absolutum*, and makes *absolutum et directum dominium* to import the same with *dominicum*. 2 *Bl. Com.* 105.

DOMINIUM PLENUM. Lat. Full ownership; the union of the *dominium directum* with the *dominium utile*. *Tayl. Civ. Law*, 478.

DOMINIUM UTILE. Lat. In the civil law. Equitable or prætorian ownership; that which was founded on equity. 1 *Mackeld. Civ. Law*, Kaufmann's note.

In later law. Use without property; the right of a tenant. *Tayl. Civ. Law*, 478.

In feudal law. Useful or beneficial ownership; the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum*, (q. v.) or ownership of the soil itself; the right of a vassal or tenant. 2 *Bl. Com.* 105. *Butler's Co. Litt.* Note 77, lib. 3.

* * Mr. Spence supposes that the divided ownership of lands, expressed by the terms *dominium directum* and *dominium utile*, was known to the Roman law; and hence deduces a principal argument in favor of the Roman origin of the feudal system. 1 *Spence's Chancery*, 28—34. But the use of these terms in the Roman law appears to have originated with the glossators, who erroneously applied the distinction between the *actiones directæ* and *utiles* to the contract of *emphyteusis*, (q. v.) 1

Mackeld. Civ. Law, 268, Kaufmann's note. *Tayl. Civ. Law*, 478. See *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, §§ 337, 338.

DOMINIUM DIRECTUM ET UTILE. L. Lat. The complete and absolute dominion in property; the union of the title and the exclusive use. Story, J. 7 *Cranch's R.* 603.

DOMINIUM EMINENS. L. Lat. Eminent domain. *Cooper's Justin. Inst. Notes*, *456, 457. *Tayl. Civ. Law*, 463. See *Eminent domain*.

Dominium non potest esse in pendent. Property cannot be in abeyance. *Halkerst. Max.* 39, cited *Broom's Max. Intro.*

DOMINUS. Lat. In the civil law. Lord, master; one who has the control or property of a thing; owner; proprietor. * *Dominus fundi*; owner of land or ground. *Inst.* 2. 1. 12. *Dominus soli*; owner of the soil. *Bract.* fol. 10. *Dominus edificii*; owner of the building. *Inst.* 2. 1. 29. *Dominus materiarum*; owner of the materials. *Id.* 2. 1. 25. *Dominus litis*, (q. v.); master of a suit; one who has the control or management of a suit.

The owner or proprietor of a thing, as distinguished from him who has the usufruct, or right of using it; (*qui habet proprietatem, etsi ususfructus alienus sit*). *Dig.* 29. 5. 1. 1.

A master or principal; one under whose direction another acts. He who appointed a *procurator*, a proctor or attorney, to act for him, was called his *dominus*, or master. *Dig.* 3. 3. 1, 39. *Inst.* 3. 28. 1. *Id.* 4. 11. pr. 3. *Story on Agency*, § 3. The word was extensively used in this sense, by the old writers on the law of England; sometimes with the addition of the adjective *principalis*, from which the modern word *principal* seems to be taken. *Bract.* fol. 42 b, 212 b, 262, 342 b. *Stat. Westm.* 2, c. 10. So, in French, he who appointed an attorney to appear for him in court, was called his master, (*son maister*). *Theloall's Dig.* lib. 13, c. 15. See *Attorney at law*. So, a party who sent another to essoin for him, was called his *dominus*. *Bract.* fol. 337 b. In old admiralty practice, a client was called *dominus*. *Dominus meus est promptus et paratus*; my client is ready and prepared. *Clerke's Prax. Cur. Adm.* tit. 9.

DOMINUS. Lat. [Fr. *seigneur*; L. Fr. *seignieur*.] In feudal and ecclesiastical law. A lord, or feudal superior. *Feud. Lib.* 1, tit. 4, 5, et *passim*. *Dominus rex*;

the lord the king; the king's title as lord paramount. 1 *Bl. Com.* 367. *Towns. Pl.* 149. *Dominus capitalis*; a chief lord. *Dominus medius*; a mesne or intermediate lord. *Dominus ligius*; liege lord or sovereign. 1 *Bl. Com.* 367.

Lord or sir; a title of distinction. It usually denoted a knight or clergyman; and, according to Cowell, was sometimes given to a gentleman of quality, though not a knight, especially if he were lord of a manor.

** Spelman, in remarking on the assumption of this divine appellation by human sovereigns, and the higher dignitaries of church and state, takes notice of what he terms the modesty of the ancients in adopting it. As an evidence of this, he mentions the fact that when the Christian emperors of Rome came to admit it among their other titles, it was first contracted (by omitting the letter *i*;) into *Domnus*; and that the Greek *κςρος* was by a similar change converted into *κςρς*, the remains of which are still preserved in the English and French *Sir*, *Sire*, (*Syr*, *Cyr*, from Gr. *κςρς*;) and the Italian and Spanish *Don* and *Dom*. See *Senior*, *Seniores*.

DOMINUS LITIS. Lat. In the civil law. Literally, master of a suit; the client or party, as distinguished from the proctor or attorney; he whose suit it was.* *Dig.* 3. 3. 31, pr. The word *dominus* is said to be here used in an improper sense. 1 *Mackeld. Civ. Law*, 268, 269, § 259, note.

The person having entire control over a suit. *Curtis*, J. 1 *Curtis' R.* 343. The party treated by the court in which it is pending, as liable for costs. Applied to a third person appearing and defending a suit in admiralty, in behalf and in the absence of the party to the suit. 1 *Curtis' R.* 201, 203.

DOMINUS NAVIS. Lat. In the civil law. The owner of a vessel. *Dig.* 39. 4. 11. 2.

DOMITÆ NATURÆ. Lat. [*domitus*, *domita*, tamed; from *domare*, to tame; L. *Fr. domestæ*, *domesche*.] In old English law. Of a tame or subdued nature or disposition. A phrase applied to tame domestic animals, (as horses, kine, sheep, poultry, &c.) in which a man may have an absolute property, as distinguished from wild animals. 2 *Bl. Com.* 390. 2 *Kent's Com.* 348. 2 *Steph. Com.* 68. It seems properly applicable to wild animals that have been actually tamed, such as deer, swans, &c. *Bract. fol.* 9. See *Feræ naturæ*.

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DOMNUS, Dompnus. Lat. The contracted form of *dominus*, as formerly used in the titles of emperors, &c. *Spelman*. See *Dominus*.

DOMUS. Lat. In civil and old English law. A house or dwelling; a habitation. *Inst.* 4. 4. 8. *Towns. Pl.* 183—185. *Appellatione domus habitationem quoque significari, palam est*; by the term *domus* it is clear that a habitation also is meant. *Dig.* 48. 5. 8. 1. Held to be synonymous with *messuagium* (a messuage). *Cro. Jac.* 634. But see *Keilw.* 57, pl. 7. *Domus competens*; a suitable house. *Magna Charta*, c. 7. *Domus mansionalis*; a dwelling-house. 11 *Mod.* 302. *Domum suam reficere unicuique licet, dum non officiat invito alteri, in quo jus non habet*; every one is allowed to repair his own house, provided he does not incommode another, against his will, in a matter in which he has no right. *Dig.* 50. 17. 61.

A home, residence or domicile. *Constitutum esse eam domum unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet, suarumque rerum constitutionem fecisset*; it is settled that that ought to be considered every man's domicile where he has had his residence and kept his books of account, and made the seat of his business affairs. *Dig.* 50. 16. 203.

Domus tutissimum cuique refugium atque receptaculum sit. A man's house should be his safest refuge and shelter. *Dig.* 2. 4. 18. This maxim has been adopted in the common law, with a slight change in the phraseology. *Domus sua cuique [est unicuique] tutissimum refugium.* To every man his own house is his safest refuge. 5 *Co.* 91 b. 11 *Id.* 82. 3 *Inst.* 162. The house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose. 5 *Co.* 91 b. *Say.* 227. *Broom's Max.* 205, [321]. A man's dwelling-house is his castle, not for his own personal protection merely, but also for the protection of his family and his property therein. *Walworth*, C. 4 *Hill's (N. Y.) R.* 437.

DOMUS CAPITULARIS. L. Lat. In old records. A chapter-house; the chapter-house. *Dyer*, 26 b.

DOMUS CONVERSORUM. L. Lat. The house of the converts. An ancient house or institution, (*Spelman* calls it *collegium*) established by Henry III. for the benefit of such Jews as were converted to the Christian faith. This continued to the

reign of Edward III. who, having expelled the Jews from the kingdom, converted the building into a place for keeping the rolls and records of the chancery. *Spelman. Cowell, voc. Rolls.* It is now called the Rolls' Office in Chancery Lane, though in Latin the old name is sometimes retained. *Id. voc. Master of the Rolls.*

DOMUS RELIGIOSA. L. Lat. In old English law. A religious house. *Mag. Cart. 9 Hen. III. c. 36.*

DON. L. Fr. A gift. *Britt. c. 34.* See *Done.*

DONA. Lat. (plur. of *Donum*, q. v.) In old English law. Gifts. *Dona clandestina sunt semper suspecta.* Clandestine gifts are always suspicious. 1 *Eden's R.* 168. *Broom's Max.* [217].

DONACIOUN, *Doneison, Donyson, Donesein.* L. Fr. A gift; a grant. *Kelham.*

DONARE. Lat. [from *donum*, a gift; L. Fr. *doner, donner.*] In civil and old English law. To give; to make a gift, (*donationem facere*). *Inst. 2. 7. 1. Quis donare possit, et quis non;* who can make a gift, and who not. *Bract. fol. 11 b.* The same as *dare.* *Id. fol. 12. Donari videtur quod, nullo jure cogente, conceditur.* That is considered to be given which is granted without the obligation of any law. *Dig. 50. 17. 82.*

DONATARIUS. L. Lat. In old English law. A donee. *Fleta, lib. 3, c. 13, § 3.*

DONATIO. Lat. [from *donum*, a gift, or *donare*, to give. See *Dig. 39. 6. 35. 1.*] In the civil law. Gift, or donation; one of the modes of acquiring property. *Inst. 2. 7, pr. 1, 2. Dig. 39. 5. Cod. 8. 54.* This is of two kinds; *causa mortis*, and *inter vivos.* *Inst. ub. sup. Bract. fol. 11.* See *infra.*

DONATIO. Lat. [L. Fr. *don, done, doun.*] In old English law. A gift of lands or chattels. See *Done.* Defined by Bracton (and after him, by *Fleta*.) to be a "certain institution, [or established mode of conveyance,] which proceeds from pure liberality and free will, under the compulsion of no law, [and has for its object] to transfer a thing to another;" (*quædam institutio, quæ ex mera liberalitate et voluntate, nullo jure cogente, procedit, ut rem transferat ad alium*). *Bract. fol. 11. Fleta, lib. 3, c. 3.* See *Done.* *Donatio* appears to have been the most ancient mode (as *do, dedi, dabo* were the most ancient words) of conveying lands, comprehending a gift, grant or feoffment; the latter term signi-

fying nothing more than the gift of a fee, (*donatio feudi*). *Co. Litt. 9. Crabb's Hist. Eng. Law, 95.* The English "gift" has in modern times been appropriated to signify the conveyance of an estate tail. 2 *Bl. Com.* 316, 317. But the Latin *donatio* is constantly used by Bracton in the largest sense, including as well a conveyance in fee simple, (*simplex et pura*.) as that which was qualified or conditional, (*conditionalis* or *sub modo*). *Bract. fol. 11, 17.*

Donatio simplex et pura; a simple and pure gift; one which, without the compulsion of any law, civil or natural, and without the intervention of any reward, menace or force, proceeds from the pure and gratuitous liberality of the donor, and where the donor in no case wills that what he has given, or promises to give, shall return to him. *Bract. fol. 11. Fleta, lib. 3, c. 3, § 3.* Otherwise called *donatio libera et pura*, (a free and pure gift). *Bract. fol. 11 b.*

Donatio conditionalis; a conditional gift, a gift under a condition or qualification, (*sub conditione vel sub modo*). *Id. fol. 11. Fleta, lib. 3, c. 3, § 4.* These terms and distinctions are taken essentially from the civil law. *Calv. Lex. Jurid.*

Donatio absoluta et larga; an absolute and unlimited gift, as to a man and his heirs generally; [a gift in fee simple]. *Bract. fol. 11 b. Fleta, lib. 3, c. 3, § 5.*

Donatio stricta et coarctata; a gift restrained and narrowed, that is, to some particular heirs exclusive of others, (*sicut certis hæreditibus, quibusdam vero a successionem exclusis*). *Id. ibid. Fleta, lib. 3, c. 3, § 5.* This answers to a gift in fee tail.

Donatio non præsumitur. A gift is not presumed. *Wharton's Lex.*

Donatio perficitur possessione accipientis. A gift is perfected [made complete] by the possession of the receiver. *Jenk. Cent. 109, case 9.* A gift is incomplete until possession is delivered. 2 *Kent's Com.* 438.

DONATIO CAUSA MORTIS. Lat. A gift in apprehension, expectation, contemplation or prospect of death.* *Dig. 39. 6. Cod. 8. 57. Nov. 87.* A conditional gift, dependent on the contingency of expected death. Gibson, C. J. 2 *Wharton's R.* 17, 22. Blackstone has defined it to be "a death-bed disposition of property, where a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered to another the possession of any personal goods, to keep in case of his

decease." 2 *Bl. Com.* 514. And this definition is essentially adopted by Tilghman, C. J. in *Wells v. Tucker*, 3 *Binney's R.* 366, 370. It is, however, too narrow in so far as it confines this species of gift to cases of last illness, it being sufficient if the apprehension of death arise from other causes, as from infirmity, old age, or any external and anticipated danger. *Dig.* 39. 6. 3. 3 *Kent's Com.* 444. This is clearly shown by Gibson, C. J. from Justinian's Institutes, and appears also from the Digests, which are followed by Bracton. 2 *Wharton's R.* 17, 22. *Inst.* 2. 7. 1. *Dig.* 39. 5 & 6. *Bract.* fol. 60. *Fleta*, lib. 2, c. 57. *Calv. Lex. Jurid.* 1 *White's Lead. Eq. Cases*, 614, (Am. ed.)

A *donatio causâ mortis* is sometimes considered as a species of legacy, and it is always accompanied with the implied trust or condition that, if the donor lives, the property shall revert to himself, being given only in contemplation of death. 2 *Bl. Com.* 514. 2 *Steph. Com.* 103, note (p), and cases cited *ibid.* *Ward on Legacies*, 55, ch. i. sect. iv. *Inst.* 2. 7. 1. 1 *White's Equity Cases*, 602, 603. *Id.* 615, (Am. ed. note, where the American cases are given). It is indispensable to its validity that it be accompanied and perfected by a present delivery of the subject of the gift, according to the manner in which it is capable of being delivered. *Id.* 604—607. *Id.* 615—619, (Am. ed.) 2 *Kent's Com.* 445—448, and notes. See 1 *Story's Eq. Jur.* §§ 606—607 d.

Donations or gifts of this kind are derived entirely from the civil law, and were introduced into England as early as the time of Bracton, who closely follows the language of the Digests. *Bract.* fol. 60. The first reported case on the subject of these gifts, is said to be that of *Jones v. Shelby*, in 1710. *Prec. in Ch.* 300.

DONATIO INTER VIVOS. Lat. A gift between the living. The ordinary kind of gift by one person to another. 2 *Kent's Com.* 438. 2 *Steph. Com.* 102. A term derived from the civil law. *Inst.* 2. 7. 2.

DONATIO PROPTER NUPTIAS. Lat. In the civil law. A gift on account of marriage. *Inst.* 2. 7. 3. *Cod.* 5. 3. A gift made by a husband to his wife, by way of security for her *dos* or marriage portion. *Hallifax, Anal.* b. 2, ch. 5, num. 16. Called in Greek *δωρεῖον*, that is, a counter or mutual gift. *Calv. Lex. Jurid.* This was

introduced by the later Roman emperors, and at first called *donatio ante nuptias*, (a gift before marriage,) it being made upon the tacit condition that it should take effect when the marriage was celebrated, and was never allowed after marriage. Justinian first allowed it as well after as before marriage, and accordingly changed its name to *donatio propter nuptias*. *Inst.* 2. 7. 3. Bracton uses it as another name for the old English dower *ad ostium ecclesiæ*, or dower according to the custom of England. *Bract.* fol. 92 b. See *Fleta*, lib. 5, c. 23, § 7. See *Dower, Dos*.

DONATION. In ecclesiastical law. A mode of acquiring a benefice by deed of gift alone, without presentation, institution or induction. 3 *Steph. Com.* 81.

DONATIVE ADVOWSON. In ecclesiastical law. A species of advowson, where the benefice is conferred on the clerk by the patron's deed of donation, without presentation, institution or induction. 2 *Bl. Com.* 23. *Termes de la Ley*.

DONATOR. Lat. [from *donare*, q. v. L. Fr. *donour*.] In civil and old English law. A donor or giver; the party who makes a *donatio*, or gift. *Bract.* fol. 11, et seq. *Fleta*, lib. 3, c. 7, § 4.

Donatorius, (properly *Donatarius*; Scot-ticé, a donatory); a donee; a person to whom a gift is made; a purchaser. *Bract.* fol. 13, et seq. *Fleta*, *ub. sup.*

Donatur nunquam desinit possidere, antequam donatorius incipiat possidere. The donor never ceases to possess, until the donee begins to possess. *Bract.* fol. 41 b.

DO'N'C'O. A contraction of *Dominico*. 1 *Inst. Cler.* 10.

DONE, Don, Doun. L. Fr. [from Lat. *donum*.] A gift. *Don est un nomme general plus que ne feffement*; gift is a more general name than feoffment. *Britt.* c. 34.

DONE, Donee. L. Fr. In old English law. Given. *DONE à Londres, &c.*; GIVEN at London, &c. *Stat. of Tithes*, 2 *Inst.* 639. *DONEES à Gaunt, &c.*; GIVEN at Ghent, &c. *Conf. Chartar.* ad finem.

DONE. [Lat. *factum, actum*.] Distinguished from "made." "A 'deed made' may no doubt mean an 'instrument made'; but a 'deed done' is not an 'instrument done,'—it is an 'act done;' and therefore these words, 'made and done' apply to acts as well as deeds." Lord Brougham, 4 *Bell's Appeal Cases*, 38. "You do not say 'to do a sale,' so readily as you say

'to make a sale.' " *Id.* 2 *Bell's Appeal Cases*, 99.

DONEC. Lat. Until. *Fleta*, lib. 3, c. 12, § 6. A word of limitation in old conveyances. *Co. Litt.* 235 a.

DONEE. [L. Lat. *donatarius*, *donatorius*.] In old English law. He to whom lands were given; the party to whom a *donatio* was made. See *Donatio*, *Donatorius*.

In later law. He to whom lands or tenements are given in tail. *Litt.* sect. 57.

In modern and American law. The party executing a power; otherwise called the *appointer*. 4 *Kent's Com.* 316. Called in New-York, the *grantee*. 1 *Rev. Stat.* [738], 730, § 135.

DONERESSE. L. Fr. A female donor. *Yearb.* T. 7 Edw. III. 34.

DONK, *Dunk*. L. Fr. Then. A corrupted form of *Donque*, (q. v.) *Fet Assaver*, *passim*.

DONOR. [from L. Fr. *donour*; Lat. *donator*.] In old English law. He by whom lands were given to another; the party making a *donatio*, (q. v.) See *Donator*.

In later law. He who gives lands or tenements to another in tail. *Litt.* sect. 57. *Termes de la Ley*.

In modern and American law. The party conferring a power. 4 *Kent's Com.* 316. Called in New-York, the *grantor*. 1 *Rev. Stat.* [738], 730, § 135.

DONQUE, *Donques*, *Adonques*, *Donc*, *Dunc*, *Donk*, *Dunk*, *Dunky*. L. Fr. Then. *Britt.* c. 30, *et passim*. *Litt.* sect. 157. *Kelham*. *Donques vivant*; then living. 1 *And.* 1, 2.

DONUM. Lat. In the civil law. A gift; a free gift. *Calv. Lex. Jur.* Distinguished from *munus*. *Dig.* 50. 16. 194, 214.

DOOM, *Dome*. In Scotch practice. Judgment; sentence. The judgment of a court, formerly pronounced by the mouth of an officer called a *dempster*, (q. v.) and ending with the words, "And this I give (or pronounce) for doom." See *Dome*. The term is still retained; sentences in criminal cases ending with the words—"which is pronounced for doom." See 2 *Brown's R.* 128.

DORESENAVANT. L. Fr. From henceforth. *Kelham*.

DORMANT. Fr. and Eng. [from Fr. *dormir*; Lat. *dormire*, to sleep.] Sleeping; suspended; not active; not in exer-

cise; out of view; not apparent; not known.

A *dormant* partner is one whose name is not known, or does not appear as partner, but who nevertheless is a silent partner, and partakes of the profits, and thereby becomes a partner, either absolutely, to all intents and purposes, or at all events, in respect to third persons. According to Mr. Justice Story, *dormant* partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm as principals. *Story on Parts*. § 80.

The term *dormant* is sometimes applied to an execution, when it is delivered to the sheriff with directions to levy merely, and not to sell until a junior execution is received. 2 *Hill's* (N. Y.) *R.* 364.

Dormiunt aliquando leges, nunquam moriuntur. The laws sometimes sleep, never die. 2 *Inst.* 161.

DORS'. An abbreviation of *Dorsetia*, Dorsetshire. 1 *Inst. Cl.* 28.

DORS, *Dorse*, *Dorce*. L. Fr. [from Lat. *dorsum*.] The back. *Kelham*. L. Fr. *Dict.* *Sur le dorse del obligation*. *Keilw.* 162.

DORSUM. Lat. The back. *In dorso recordi*; on the back of the record. 5 *Co.* 44 b.

DOS. Lat. [Gr. *ὑπόψις*.] In the Roman law. A sum of money given to a husband, to enable him to sustain the burdens of marriage; (*pecunia data marito ad sustinenda matrimonii onera*). *Heinecc. El. Jur. Civ.* lib. 2, tit. 8, § 465. *Dig.* 23. 3. *Cod.* 5. 12. The portion which was given with a woman to her husband in marriage; corresponding with what was called in the common law, *maritagium*, or marriage portion. 1 *Reeves' Hist. Eng. Law*, 103. *Co. Litt.* 31 a. *Bract.* fol. 92. Properly translated by the word *dowry*. *Macqueen on Husb. & Wife*, 151, note.

Dos profectitia was that species of dowry or portion which proceeded from, (*profecta*), or was given by the father or relative (*parente*) of the male sex, out of his property or by his act. *Dig.* 23. 3. 5, pr. *Calv. Lex. Jur.*

Dos adventitia was that kind of portion which was bestowed by a stranger, (*ab extraneo*). *Id.* *Dig.* 23. 3. 5. 9, 11. *Bracton* adopts these terms and distinctions, but defines the *dos profectitia* to be that which

was given by the father or mother, or other relative, at the time of the contract for marrying the daughter; and the *dos adventitia* to be that which was bestowed by others than the father or mother, whether it were a relative or stranger. *Bract.* fol. 92 a, b. *Fleta* uses the terms *dos perfectiva*, and *dos adventiva*. *Fleta*, lib. 5, c. 23, § 4.

DOS. L. Lat. In old English law. That property or portion which a freeman gave to his wife at the door of the church, in consideration of the nuptials that were about to take place, and the burden of matrimony; and intended for the support of the wife and education of the children, in case the husband should die before her; (*id quod liber homo dat sponsæ suæ ad ostium ecclesiæ, propter nuptias futuras et onus matrimonii, et ad sustentationem uxoris et educationem liberorum, cum fuerint procreati, si vir præmoriatur*). *Bract.* fol. 92. *Fleta*, lib. 5, c. 23, § 2. Usually translated *dower*; and otherwise called by Bracton, *dos mulieris secundum consuetudinem Anglicanam*; the wife's dower according to the custom of England. *Bract.* fol. 92 b. 1 *Reeves' Hist.* 100. See *Dos rationabilis*.

In later law. The one-third part of the husband's lands, which the law, on his death, gave the wife, in case he had not previously endowed her *ad ostium ecclesiæ*. This was established by the Magna Charta of 9 Hen. III. c. 7. *Assignetur ei pro dote sua, tertia pars totius terre mariti sui, que sua fuit in vita sua, nisi de minori dotata fuerit ad hostium ecclesiæ*. This provision, however, is not contained in the Charter of King John.

Dower, in the modern sense. 2 *Bl. Com.* 129, 134. See *Dower*.

* * The use of this word to signify the *dower* of the common law, though established by long usage, is, as Spelman has shown, an obvious misapplication. *Dos* was used in the Roman law, in the opposite sense of a marriage portion. 2 *Bl. Com.* 129. See *supra*. Hence, Tacitus remarked it as a singularity among the ancient Germans, that instead of the wife bringing a portion to the husband, the husband conferred it on the wife. *Dotem non uxor marito, sed uxori maritus affert*. *De Morib. Germ.* c. 18. *Dos* was used in the English sense of dower as early as the time of Glanville, though that writer takes notice that in the Roman law it had a different meaning. *Glanv.* lib. 6, c. 1. Brac-

ton constantly employs *dos* in the sense of dower, (sometimes qualifying it as *dos rationabilis*, (q. v.) and *dos mulieris*,) though he adopts the Roman phrases *dos profectitia*, *dos adventitia*, in which *dos* denoted the reverse of dower. *Bract.* fol. 92 a, b. The proper Latin word for dower, according to Spelman, is *doarium*, a term used in that sense in the early continental law of Europe. See *Doarium*.

Dos de dote peti non debet. Dower ought not to be demanded of dower. *Co. Litt.* 31. 4 *Co.* 122 b. A widow is not dowerable of lands assigned to another woman in dower. 1 *Hilliard's Real Prop.* 135.

Doti lex favet; premium pudoris est, ideo paratur. The law favors dower; it is the reward of modesty, therefore it should be spared. *Branch's Princ. Co. Litt.* 31.

Ubi nullum matrimonium, ibi nulla dos. Where there is no marriage, there is no dower. *Bract.* fol. 92. To entitle a woman to dower, she must be the actual wife of the party at the time of his decease. 2 *Bl. Com.* 130. This maxim seems to be derived from that of the civil law: *Ubiunque matrimonii nomen non est, nec dos est*. *Dig.* 23. 3. 3.

DOS RATIONABILIS. L. Lat. In old English law. Reasonable dower. *Rationabilis dos est cujuslibet mulieris de quocunque tenemento, tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominico suo, et ita in feodo, quod eam inde dotare poterit die quo eam desponsavit*. Reasonable dower is [the right] of every married woman, out of every kind of tenement, [being] the third part of all the lands and tenements which her husband held in his demesne and in fee, so that he might endow her thereof on the day he married her. *Bract.* fol. 92. See *Fleta*, lib. 5, c. 23, § 11. This passage is quoted by Lord Coke. *Co. Litt.* 33 b.

This kind of dower was otherwise called dower by the common law. 2 *Bl. Com.* 134.

DOT. Fr. [from Lat. *dos*, q. v.] In the civil law. Dowry, or marriage portion. *Civ. Code of Louis.* art. 2317.

DOTAL. [from Lat. *dotalis*.] Relating to the marriage portion of a woman; constituting or comprised in her portion.* *Wharton's Lex.*

This word is not properly applicable to the dower of the English law, the Lat. *dotalis* from which it is formed being a term of the Roman law, derived from *dos*

in the Roman sense. *Dotale prædium*; the dotal estate. *Inst.* 2. 8, pr. See *Dig.* 23. 4. *Id.* 23. 5.

DOTALITIUM. L. Lat. In canon and feudal law. Dower. *Spelman*, voc. *Doarium*. *Calv. Lex.* 2 *Bl. Com.* 129. Used as early as A. D. 841.

DOTARD. A dry old tree; a tree decayed with age. *Bacon's Works*, iv. 217. Pollards and dotards. *Ambl.* 134.

DOTARE. Lat. [from *dos*, q. v.] In old English law. To endow; to give a dowry or dower. *Bract.* fol. 93, 94. *Dotata*; endowed. *Id. ibid.*

DOTARIUM. L. Lat. In early European law. Dower. *Spelman*, voc. *Doarium*.

NOTE, Dotif. L. Fr. Doubtful. *Kelham*.

NOTE. Span. [from Lat. *dos*, q. v.] In Spanish law. The marriage portion of a wife. *White's New Recop.* b. 1, tit. 6, c. 1. The property which the wife gives to the husband on account of marriage, or for the purpose of supporting the matrimonial expenses. *Id.* b. 1, tit. 7, c. 1, § 1. *Schmidt's Civ. Law*, 75.

DOTISSA. L. Lat. [from *dos*, dower.] A dowager. *Com.* 185.

DOTKIN. See *Doitkin*.

DOTOUS. L. Fr. Doubtful; in doubt. *Kelham*.

DOUARIUM. See *Doarium*.

DOUBLE AVAIL OF MARRIAGE. In Scotch law. Double the ordinary or single value of a marriage. *Bell's Dict.* See *Duplex valor maritaggi*.

DOUBLE BOND. In Scotch law. A bond with a penalty, as distinguished from a single bond. 2 *Kames' Equity*, 359.

DOUBLE COSTS. In practice. The ordinary single costs of suit, and one-half of that amount in addition. 2 *Tidd's Pr.* 987. Double is not used here in its ordinary sense of *twice* the amount. These costs are now abolished in England, by statute 5 & 6 Vict. c. 97. *Wharton's Lex.*

DOUBLE FINE. In old English law. A fine *sur done grant et render* was called a double fine, because it comprehended the fine *sur cognizance de droit come ceo*, &c. and the fine *sur concessit*. 2 *Bl. Com.* 353.

DOUBLE INSURANCE, (or ASSURANCE). The insurance of property twice by the party insured, on the same risk.* A double insurance is where the party insured makes two insurances on the same risk and the same interest. 3 *Kent's Com.* 280. See 2 *Steph. Com.* 175. *Park on*

Ins. 280. This is not to be confounded with *re-assurance*, which is made by the insurer. See *Re-assurance*.

DOUBLE PLEA. [L. Lat. *duplex placitum*.] A plea which contains several distinct answers to the plaintiff's declaration.* *Steph. Pl.* 251, 252. A plea containing several distinct matters in answer to different parts of the declaration, where either of such matters alone is a sufficient answer to the whole.* *Id. ibid.* See *Arch. Civ. Pl.* 174. A plea containing an averment or denial of several facts, constituting distinct points or defences.* 1 *Burr.* 316. The averment of several facts going to make up one point, will not render a plea double. 1 *Smith's Lead. Cas.* 249, (Am. ed. note).

DOUBLE QUARREL. See *Duplex querela*.

DOUBLE VOUCHER. In a common recovery. A voucher over; a voucher by a party who had himself been vouched.* It was formerly usual, first to convey an estate of freehold to some indifferent person, against whom the præcipe was brought; and then he vouched the tenant in tail, who vouched over the common vouchee. *Id. ibid.* See *Voucher*.

DOUBLE WASTE. The name given to that species of waste where a tenant suffers a house to be wasted, and then sells timber to repair it. *Co. Litt.* 53 b.

DOUCE, Douze. L. Fr. Twelve. *Reconnaissance de douce jurours.* *Britt.* c. 90.

DOULCE. L. Fr. Gracious; gentle. *Kelham*.

DOUN. L. Fr. A gift. Otherwise written *don* and *done*. The thirty-fourth chapter of Britton is entitled *De Douna*.

DOUNQUES. L. Fr. Then. *Yearb.* M. 2 Edw. II. 21.

DOUNT. L. Fr. Wherefore; from whence. *Kelham.* *Britt.* c. 110.

Whereof; out of which. *Id. ibid.*

DOUS. L. Fr. Two. *Kelham*.

DOUTE. L. Fr. Doubt; fear. *Kelham*.

DOUTER, Doubter. L. Fr. To doubt; to fear or apprehend. *Kelham*.

DOUX. L. Fr. Two. *Kelham*.

DOVORRE, Douree. L. Fr. Dover. *Kelham*.

DOW. [Lat. *dotare*.] To give, or endow. *Cowell*.

DOWABLE. [Lat. *dotabilis*.] Entitled to be endowed.

DOWAGER. [L. Lat. *dotata, dotissa*.]

In English law. A widow endowed, or who has a jointure. *Blount*. A widow who either enjoys a dower from her deceased husband, or who has property of her own brought by her to her husband on marriage, and settled on herself after his decease. *Brande*.

A title given in England to a widow lady, to distinguish her from the wife of her husband's heir, having the same title. *Brande*. It is applied chiefly to the widows of princes, dukes, and other personages of rank and title. *Cowell*. *Blount*. A queen dowager is the widow of the king. 1 *Bl. Com.* 223.

DOWARIE. L. Fr. Dower. *Britt.* c. 47.

DOWE. L. Fr. Endowed. *Britt.* c. 110.

DOWER. L. Fr. and Eng. [L. Lat. *dos*, *dos mulieris*, *doarium*, *douarium*, *dotarium*, *dosarium*, *dotulitium*, *triens*, *tertia*; L. Fr. *dowarie*, *douaire*, *dowere*, *dower*; Scotch, *terce*.] That portion (usually one-third) of a man's lands and tenements which his widow is entitled, after his death, to have and hold for the term of her natural life, for the sustenance of herself, and the nurture and education of her children. *Co. Litt.* 30 b. *Litt.* sect. 36. *Bract.* fol. 92, 92 b. *Fleta*, lib. 5, c. 23, § 11. 2 *Bl. Com.* 129, 130. 2 *Steph. Com.* 302. 2 *Crabb's Real Prop.* 124, § 1117. 4 *Kent's Com.* 35. *Macqueen, Husband & Wife*, 158. The estate or interest of the widow in such portion is called an *estate in dower*, and she herself is termed *tenant in dower* (*tenens in dote*). *Co. Litt.* 30 a. See *Estate in dower*, *Dos*.

* * Dower is now given to the widow by the express provision of the law, but was anciently conferred in England by the act of the husband himself, who endowed his wife at the church door, at the time of the espousals, with the whole of his lands or such part as he pleased, specifying the same; which was called the *constitutio dotis*, or establishment of dower. See *Dower ad ostium ecclesiæ*. If no specific dotation of this kind was made by the husband, the common law gave the wife the *third* part (which was called her *dos rationabilis*, q. v.) of such lands and tenements as the husband was seised of at the time of the espousals, or, in Bracton's language, of which he might then have endowed her. 2 *Bl. Com.* 134. *Bract.* fol. 92. This is the origin of the modern

dower, and is expressly confirmed by Magna Charta, (9 Hen. III.) c. 7. The ancient mode of endowment at the church door, by the husband, is supposed by some to be derived from the *donatio propter nuptias* of the Roman law, and Bracton calls it expressly by that name. *Long's Discourses*, 99—102. *Bract.* fol. 92 b. But see 2 *Bl. Com.* 129. *Spelman*, voc. *Doarium*. *Cruise Dig.* tit. Dower.

The word *dower* itself is derived by Spelman from the Fr. *douaire*, as are also the Lat. *doarium*, and *douarium*. It occurs in its present form at a very early period, being constantly used as a law French word by Britton, whose several chapters on this subject are entitled *De Dowers*, *De establemmentz de dower*, *De assignment de dower*, and *De remedy de dower*. *Britt.* cc. 101, 102, 103, 104. *Dowar* or *douar* may have been an earlier form. *Dower* is also used in the original law French of Littleton.

DOWER BY THE COMMON LAW. [L. Lat. *dos per communem legem*.] The ordinary kind of dower in English and American law, consisting of one-third of the lands of which the husband was seised in fee at any time during the coverture. *Litt.* sect. 36. 2 *Bl. Com.* 132. 2 *Steph. Com.* 302. 4 *Kent's Com.* 35. 1 *Greenleaf's Cruise's Dig.* [183], 165, note. See *United States Digest*, Dower and Curtesy.

The law of dower in England has been materially modified of late, by the statute called the Dower Act, 3 & 4 Will. IV. c. 105.

DOWER BY CUSTOM. A kind of dower in England, regulated by custom, where the quantity allowed the wife differed from the proportion of the common law; as that the wife should have half the husband's lands, or, in some places, the whole; and in some, only a quarter. 2 *Bl. Com.* 132. *Litt.* sect. 37.

DOWER AD OSTIUM ECCLESIAE. L. Lat. Dower at the church door or porch. An ancient kind of dower in England, where a man, (being tenant in fee simple, of full age,) openly at the church door, where all marriages were formerly celebrated, after affiance made and troth plighted between them, endowed his wife with the whole of his lands, or such quantity as he pleased, at the same time specifying and ascertaining the same. *Litt.* sect. 39. 2 *Bl. Com.* 133. According to Bracton, the endowment was made before

the espousal, at the commencement of the contract, (*ante desponsationem, in initio contractus*). *Bract*. fol. 92.

* * This appears to have been the original English dower, and is supposed by some to have been derived from the *donatio propter nuptias* of the civil law. See *Dower*. It was formerly the most usual species of dower, and, though latterly fallen into disuse, was not abolished until the statute of 3 & 4 Will. IV. c. 105, s. 18. 2 *Bl. Com.* 133—135. 1 *Steph. Com.* 252, 253. The wife might be endowed of personalty or goods as well as of lands, and a trace of this ancient kind of dower is still distinctly preserved in the marriage ritual of the church of England, in the expression "with all my worldly goods I thee endow." See 2 *Bl. Com.* 134, note (p).

DOWER DE LA PLUS BEALE. L. Fr. Dower of the fairest [part]. A species of ancient English dower, incident to the old tenures, where there was a guardian in chivalry, and the wife occupied lands of the heir as guardian in socage. If the wife brought a writ of dower against such guardian in chivalry, he might show this matter, and pray that the wife might be endowed *de la plus belle* of the tenement in socage. *Litt.* sect. 48. This kind of dower was abolished with the military tenures. 2 *Bl. Com.* 132.

DOWER EX ASSENSU PATRIS. L. Lat. Dower by the father's assent. A species of dower *ad ostium ecclesie*, made when the husband's father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father's lands. *Litt.* sect. 40. 2 *Bl. Com.* 133.

DOWERE. L. Fr. Dower. *Dowere ne devietz avoir, qar vostre baroun est en vie*; dower you ought not to have, for your husband is alive. *Yearb.* P. 1 Edw. II. p. 6.

DOWMENT. L. Fr. In old English law. Endowment. A word used by Littleton in nearly the sense of *dower*. *Dower que est appelle dowment ad ostium ecclesie, et dower appelle dowment, &c.*; dower which is called dowment at the church door, and dower called dowment, &c. *Litt.* sect. 38.

DOWRESS. A woman entitled to dower; a tenant in dower. 2 *P. Wms.* 707.

DOWRY. The portion or property which the wife brings her husband in marriage; which, if in lands, was anciently called *frank-marriage*, or *marriage*, (*maritagium*); if in money, goods or chattels, a

marriage portion. *Co. Litt.* 31 a. See *Maritagium*. It expresses the proper meaning of the *dos* of the Roman, the *dot* of the French, and the *dote* of the Spanish law, but is a very different thing from *dower*, with which it has sometimes been confounded.

DOY. L. Fr. Owe; ought. *Sauve la foy que j'eo doy au roy*; saving the faith which I owe to the king. *Britt.* c. 68. See *Doit*.

DOYNE, Doigne. L. Fr. Give. *Jeo te doyne*; I give you. *Britt.* c. 36.

DÖZ, Doze, Dozze. L. Fr. Twelve; the twelfth. *Kelham*.

DOZEIN. L. Fr. Twelve; a person twelve years of age. *Stat.* 18 Edw. II. *Barringt. Obs. Stat.* 208.

DOZYME, Dozime, Dozine. L. Fr. Twelve. *A parfaire sa ley ove sa dozime meyn*; to perfect his law with his twelve hand. *Britt.* c. 27. See *Duzein*.

DR. An abbreviation of *Droit*. *Kelham*.

DRACHMA. A term employed in old pleadings and records, to denote a great *Towns. Pl.* 180.

An Athenian silver coin, (Gr. *δραχμή*) of the value of about 7½d. sterling.

DRAFT, Draught. The common term for a bill of exchange; as being *drawn* by one person on another. 2 *Bl. Com.* 467.

An instrument or paper as first, or originally *drawn*, or roughly written before it is copied or engrossed.

DRANA. L. Lat. In old records. A drain. *Cowell*.

DRASCHIA. L. Lat. In old English law. Grains; the refuse of malt after brewing. *Fleta*, lib. 2, c. 82, § 5.

DRAW. [L. Lat. *tractare, detractare*.] In English criminal law. To draw on a hurdle to the place of execution. 4 *Bl. Com.* 92, 377. In cases of high treason the convict was *drawn*, hung and quartered. *Id. ibid.*

DRAWBACK. In commerce. An allowance made to merchants on the re-exportation of certain imported goods, which in some cases consists of the whole, in others of a part of the duties which had been paid upon the importation. *Encyclop. Americ.*—The remitting or paying back of duties previously paid on a commodity, on its being exported. *McCulloch's Dict. Andrews on Rev. Laws*, chap. vii. See *De-benture*.

DRAWEE. [L. Lat. *trassatus*.] In mercantile law. The person to whom a

bill of exchange is addressed, or on whom it is drawn. 3 *Kent's Com.* 75. *Story on Bills*, § 115.

DRAWER. [L. Lat. *trassans*.] In mercantile law. The person who draws a bill of exchange. 3 *Kent's Com.* 75. *Story on Bills*, § 114.

DRAWING TO EXECUTION. In English criminal law. The act of drawing a condemned criminal on a hurdle, from the place of prison to the place of execution. *Bacon's Works*, iv. 291. 4 *Bl. Com.* 377. See 4 *Mod.* 162. Where a man was hanged on an appeal of death, the wife of the person killed and all his kindred drew the felon to execution. *Blackst. L. Tr.* 35.

DRAWLATCHES. In old English law. Thieves or robbers. *Stat. 5 Edw. III. c. 14.* 7 *Ric. II. c. 5.* *Lambard Eirenarch.* lib. 2, c. 6. *Cowell.*

DREIT, Drect, Drett. L. Fr. Right. *Kelham.* The same as *droit*, (q. v.) These forms of the word show very clearly the derivation, through the L. Lat. *derittum*, *derictum*, from the Lat. *directum*, (qq. v.)

DREIT DREIT. L. Fr. [Lat. *jus duplicatum*.] In old English law. Double right. The right of possession and the right of property united. (*Est jus possessionis et jus proprietatis*.) *Bract.* fol. 206 b, 283 b. See *Droit droit*.

DRENCHES, Drenches. [L. Lat. *drengei*.] A species of tenants mentioned in Domesday book, whom Spelman supposes to have been military vassals or tenants by knight-service. The same author quotes an old MS. record of the family of Sharnburn, in Norfolk, from which it would appear that the name was given to certain tenants *in capite*, who, at the coming of William the Conqueror, being put out of their estates, were afterwards, upon complaint being made to him, restored to them, on their making it appear that they were owners thereof, and had taken no part against him either by aid or counsel, (*in consilio et auxilio*). *Spelman.* According to Lord Coke, who spells the word *dreuchs*, they were free tenants of a manor. *Co. Litt.* 5 b.

DRENER. See *Derener*.

DRENGAGE. [L. Lat. *drengagium*.] The tenure by which the *drenches* (q. v.) held their lands. *Spelman.*

DREYN, Drein. L. Fr. Forms of *Darrein*, (q. v.)

DRIFT. [Lat. *agitatio*.] In old English law. A driving. A term applied to cattle. See *infra*.

DRIFT OF THE FOREST. [L. Lat. *agitatio animalium in foresta*.] In forest law. An examination or view of cattle in a forest; formerly made at certain times in the year, by the officers of the forest, by driving all the cattle into some pound or enclosed place, in order to see whose they were, and whether they were commonable, and whether the forest were surcharged or not. *Manwood*, part 2, c. 15. 4 *Inst.* 309. *Termes de la Ley.* See *Common, Forest*.

DRIFT-WAY. [L. Lat. *actus, drova*.] A way, road or path used for driving cattle. *Co. Litt.* 56 a. See *Actus, Drift*. A term used in the state of Rhode Island. 2 *Hilliard's Real Prop.* 33. Called in Scotch law, *drove-road*, (q. v.) A carriage-way will comprehend a horse-way, but not a drift-way. *Heath, J. 1 Taunt.* 285.

DRINCLEAN. Sax. A contribution of tenants, in the time of the Saxons, towards a potato, or ale, provided to entertain the lord, or his steward. *Cowell.* See *Cervisarii*.

DRIP. [Lat. *stillicidium*.] A species of servitude derived from the civil law, by which one man engages to permit the waters flowing from the roof of his neighbor's house to fall [or drip] on his estate. 3 *Kent's Com.* 436. 2 *Hilliard's Real Prop.* 85. See *Stillicidium*.

DROFDENE, Drofden. Sax. A grove, or woody place, where cattle were kept. *Cowell.* *Blount.*

DROFLAND. Sax. [from *dryfene*, driven.] A quit rent, or yearly payment, formerly made by some tenants to the king, or their landlords, for driving their cattle through a manor to fairs or markets. *Cowell.* *Blount.*

DROIT, Droict, Dreit. L. Fr. [Lat. *jus, rectum, directum*.] Right; justice. *Co. Litt.* 158 b. See *Directum, Right*.

A right. See *infra*, and see *Jus*.

A writ of right, so called in the old books. *Co. Litt.* 158 b.

Law. The common law is sometimes termed *common droit*. *Litt.* sect. 213. *Co. Litt.* 142 a. See *Common law*.

Droit ne done plus que soit demande. The law gives not more than is demanded. 2 *Inst.* 286.

Droit ne poet pas morier. Right cannot die. *Jenk. Cent.* 100, case 95.

DROIT D'AUBAINE (D'AUBAIGNE, and sometimes **DROIT D'AUBENAGE).** L. Fr. [L. Lat. *jus albinatus, jus albanagii*.] A right or prerogative of the sovereigns of

some countries in Europe, entitling them, on the death of an alien or stranger, to all he was worth, unless he had a particular exemption. 1 *Rob. Charles V. Appendix*, Note xxix. 1 *Bl. Com.* 372. This was particularly the case in France, where, from the time of Charlemagne down to within a recent period, a stranger could not, except by special favor, dispose of his property by will, and when he died, the sovereign or lord of the barony succeeded by right of inheritance to his estate. *Id. ibid. Spelman*, voc. *Albanus. Ducange*, voc. *Albani. Répertoire de Jurisp. par Merlin*, tit. *Aubaine*. 2 *Kent's Com.* 67—69. It was abolished in 1791, but revived under Napoleon, and was finally abolished only in 1819. *Id. ibid.* It appears, however, to have survived in other places to the present day, being formally relinquished as a subsisting right, in treaties recently made between the United States and several of the European powers. *Convention with Hesse Cassel*, March 25, 1844, Art. 1. *Convention with Wurttemberg*, April 10, 1844.

The etymology of *aubaine* has been variously given. Nicot says it was anciently spelt *hobaine*, from the verb *hober*, which signifies to remove from one place to another. *Thresor de la Lang. Franc.* fol. Paris, 1606. Cujacius derives the word from the Lat. *advena*, a foreigner or stranger. *Cujac. Opera*, fol. Neap. 1758, tom. ix. col. 1719. Spelman derives it from the Lat. *aliba natus*, (a person born elsewhere,) which seems the best explanation. *Spelman*, voc. *Albanus. P. Cyclop.* voc. *Aubaine*.

DROIT DE BRIS. L. Fr. A right formerly claimed by the lords of the coasts of certain parts of France, to shipwrecks, by which not only the property, but the persons of those who were cast away, were confiscated for the prince who was lord of the coast. Otherwise called *droit de bris sur le naufrages*. The right prevailed chiefly in Bretagne, and was solemnly abrogated by Henry III. as duke of Normandy, Aquitaine and Guienne, in a charter granted A. D. 1226, preserved among the rolls at Bordeaux. *Laws of Oleron*, Art. xxvi. Note. 1 *Peters' Adm. Decis.* Appendix. See *Bris*.

DROIT DE GARDE. In French feudal law. Right of ward. The guardianship of the estate and person of a noble vassal, to which the king, during his minority, was entitled. *Steph. Lect.* 250.

DROIT DE GITE. Fr. In French feudal law. The duty incumbent on a roturier, holding lands within the royal domain, of supplying board and lodging to the king and to his suite, while on a royal progress. *Steph. Lect.* 351.

DROIT DE GREFFE. Fr. In old French law. The right of selling various offices connected with the custody of judicial records or notarial acts. *Steph. Lect.* 354. A privilege of the French kings.

DROIT DE MAITRISE. In old French law. A charge payable to the crown by any one, who, after having served his apprenticeship in any commercial guild or brotherhood, sought to become a master workman in it on his own account. *Steph. Lect.* 354.

DROIT DE PRISE. Fr. In French feudal law. The duty (incumbent on a roturier) of supplying to the king on credit, during a certain period, such articles of domestic consumption as might be required for the royal household. *Steph. Lect.* 351.

DROIT DE QUINT. Fr. In French feudal law. A relief payable by a noble vassal to the king as his seigneur, on every change in the ownership of his fief. *Steph. Lect.* 350.

DROIT DROIT. L. Fr. [*L. Lat. jus duplicatum.*] In old English law. A double right. The right of possession united with the right of property. 2 *Bl. Com.* 199. *Co. Litt.* 266 a. 1 *Reeves' Hist.* 476. 4 *Kent's Com.* 373. See *Droit droit*.

DROIT ÉCRIT. Fr. In French law. (The written law.) The Roman civil law, or Corpus Juris Civilis. *Steph. Lect.* 130.

DROITS OF ADMIRALTY. Rights or perquisites of the admiralty. A term applied to goods found derelict at sea. 1 *Robinson's Adm. Rep.* 32. 2 *Kent's Com.* 357, note. Applied also to property captured in time of war, by non-commissioned vessels of a belligerent nation. 1 *Kent's Com.* 96.

DROITURAL. [from *droit*, right.] In old English practice. Relating to right; or, more strictly, relating to the mere right of property, as distinguished from the right of possession. An action *droitural* was an action brought to determine the right of property, as distinguished from an action *possessory*, in which the object was to ascertain the right of possession. 3 *Steph. Com.* 486. *Burton's Real Prop.* 123, pl.

377, note. *Roscoe's Real Act.* 2. This was the old distinction of writs relating to lands. *Gilb. C. Pleas.* 5. Writs of right proper were writs droitural. See *Possessory*.

DROITURE. L. Fr. [from *droit*, right.] In old English law. Right; justice. *En primes voit le roy—que common droiture soit fait à tous*; in the first place, the king wills that common right be done to all. *Stat. Westm.* 1, c. 1.

DROITURELE, Droiturel, Droiturelle. L. Fr. [from *droiture* or *droit*, right.] Rightful; lawful. *Britt.* c. 27.

DROMO, Dromunda. L. Lat. In old records. A ship or large vessel made for great burden and swift sailing. *Cowell. Spelman.*

DROVA. L. Lat. In old records. A drove, or drift-way. A common road for driving cattle. *Cowell.*

DROVE-ROAD. In Scotch law. A road for driving cattle. 7 *Bell's Appeal Cases*, 43, 53, 57. A drift-road. Lord Brougham, *Id. ibid.*

DROVE-STANCE. In Scotch law. A place adjoining a drove-road, for resting and refreshing sheep and cattle on their journey. 7 *Bell's App. Cas.* 53, 57.

DROWN. To merge or sink. "In some cases, a right of freehold shall *drown* in a chattel." *Co. Litt.* 266 a, 321 a.

DRU. A thicket of wood in a valley. *Domesday.*

DRUCHTE, Druthe. In old European law. Betrothed. *L. Salic.* tit. 14, § 10. *Spelman.*

DRUDES, Drudi. L. Lat. In old feudal law. A name given to a species of vassal. *Spelman.*

DRUNGARIUS. L. Lat. In old European law. The commander of a *drungus*, or band of soldiers. Applied also to a naval commander. *Spelman.*

DRUNGUS. L. Lat. In old European law. A band of soldiers, (*globus militum*). *Spelman.*

DRY EXCHANGE. [L. Lat. *cambium siccum*.] In English law. A term formerly in use, said to have been invented for the purpose of disguising and covering usury; something being pretended to pass on both sides, whereas in truth, nothing passed but on one side, in which respect it was called *dry*. *Stat. 3 Hen. VII.* c. 5. *Cowell. Blount. Lud. Lopez. de Contr. et Negot.* cited *ibid.*

DRY MULTURES. In Scotch law.

Quantities of corn paid to a mill, whether the payers grind or not. *Wharton's Lex.*

DRY RENT. [L. Lat. *redditus siccus*.] The same as *rent seck*, (q. v.) 2 *Bl. Com.* 42.

Duas uxores eodem tempore habere non licet. It is not lawful to have two wives at the same time. *Inst.* 1. 10. 6. 1 *Bl. Com.* 436.

DUB. An abbreviation of *Dubitatur*, (q. v.) used in the reports.

DUBITANS. Lat. Doubting. Dobbin, J. *dubitans*. 1 *Show.* 364.

DUBITATUR. L. Lat. It is doubted. Frequently used in the books, where a point is doubted.

DUBITAVIT. Lat. Doubted. Vaughan, C. J. *dubitavit*. *Freem.* 150.

DUBLEE. L. Fr. Doubled; repeated; duplicate. *Kelham.*

DUC. L. Fr. Duke. *Yearb.* M. 8 Hen. VI. 22.

DUCATUS. L. Lat. [from *dux*, q. v.] In old English law. A duchy. *Reg. Orig.* 153.

In feudal and old European law. A dukedom; the dignity or territory of a duke. *Feud. Lib.* 1, tit. 14. *Lib.* 2, tit. 10. *Spelman*, voc. *Dux*.

DUCE, Douce. L. Fr. [from Lat. *dulcis*.] Fresh. *Evee douce*; fresh water. *Britt.* c. 1.

DUCES TECUM. L. Lat. (You bring with you.) In practice. A term applied to certain writs, where a party summoned to appear in court is required to *bring with him* some piece of evidence, or other thing that the court would view. *Cowell. Termes de la Ley.* See *Subpoena duces tecum*.

DUCES TECUM LICET LANGUIDUS. L. Lat. (Bring with you, although sick.) In practice. An ancient writ, now obsolete, directed to the sheriff, upon a return that he could not bring his prisoner, without danger of death, he being *adeo languidus*, (so sick); whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus*. *Cowell. Blount.*

DUCHY COURT OF LANCASTER. A court of special jurisdiction in England, held before the chancellor of the duchy of Lancaster, or his deputy, concerning all matter of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 *Bl. Com.* 78. 3 *Steph. Com.* 446. The proceedings in this court are the same as on the equity side in the courts of exchequer and chancery. *Id. ibid.*

DUCISSA. L. Lat. [from *dux*, q. v.] In old pleading. A duchess. *Towns. Pl.* 149.

DUCKING STOOL. See *Castigatory, Cucking stool.*

DUDZIME. L. Fr. Twelve. *Kelham.* *Dudzime main*; twelve hands. *LL. Gul. Cong.* l. 4.

DUE. L. Fr. Of the. *Kelham.*

DUE. [Lat. *debitum*, from *debere*, to owe.] That which one owes; that which one ought to pay, or do to, or for another.*

Owed, or owing, as distinguished from payable. A debt is often said to be due from a person, where he is the party owing it, or primarily bound to pay, whether the time for payment has, or has not arrived. *Story, J. 6 Peters' Rep.* 29, 36. *Wharton's Lex.* See *Debitum.*

Payable. 3 *Selden's R.* 476. A bill or note is commonly said to be due, when the time for payment of it has arrived. *Story, J. ub. sup.*

Regular; formal; according to rule or form.

DUE-BILL. A brief written acknowledgment of a debt, usually in the following words: "Due A. B.—dollars, [payable on demand.] Dated, &c. C. D." It is not made payable to order, like a promissory note. See *I. O. U.*

DUE PROCESS OF LAW. Law, in its regular course of administration through courts of justice. 2 *Kent's Com.* 13, cited by *Comstock, J. 3 Kernan's R.* 395. Due process of law imports a judicial trial, and not a mere declaration of legislative will by the passing of a law. *Johnson, J. Id.* 416. See 4 *Hill's (N. Y.) R.* 140. 3 *Comstock's R.* 511. 2 *Story on the Const.* § 1789.

DUELLUM. Lat. [from *duo*, two.] In old English and Scotch law. The judicial combat, or trial by battle. *Bract. lib.* 3, tr. 2, c. 21, fol. 141 b. *Spelman. Skene de Verb. Sign.* A single combat between two, to prove the truth in a suit; the one who overcame being considered as having proved his case. (*Est singularis pugna inter duos, ad probandum veritatem litis, et qui vicerit probasse intelligitur.*) *Fleta*, lib. 1, c. 34, § 26. *Duellum* is the appropriate Latin word, sometimes expressed by *monomachia*, (single fight). *Id. ibid. Co. Litt.* 294 b. 4 *Inst.* 157. *Battail, bataille*, or *battayle*, was the Norman French. *Vadiare duellum*; to wage the duel, to give pledges to fight. *Bract. fol.* 141 b. *Per-*

ussio duelli; the striking of a duel, the commencement of the combat. *Id. ibid.* See *Battel, Combat, Camp-fight.*

DUI. L. Fr. To-day. *Kelham.*

DUIST, Duit. L. Fr. Ought. *Kelham. Britt. c.* 22.

DUKE. [L. Fr. *duc*; from Lat. *dux*, from *ducere*, to lead.] The first title of dignity in Great Britain, after the royal family. 1 *Bl. Com.* 397. 3 *Steph. Com.* 1, 2. *Camden Brit. tit. Ordines.* Derived from the Latin *dux*, the leader of an army, which duke itself originally signified. *Crabb's Hist.* 236. See *Dux.*

DULY. In due or proper form, or manner.

Regularly; upon a proper foundation, as distinguished from mere form. See 15 *Mees. & W.* 465, 469.

DUM. Lat. While. A word of limitation in old conveyances. *Co. Litt.* 235 a 10 *Co.* 41 b.

DUM BENE SE GESSERIT. L. Lat. While he conducted himself well; during good behaviour. 2 *Bl. Com.* 252. The implied condition on which a feud or fee was originally given. *Id.* See *Quamdiu bene se gesserint.*

DUM FERVET OPUS. Lat. While the work glows; in the heat of action. 1 *Kent's Com.* 120.

DUM FUIT INFRA ÆTATEM. L. Lat. (While he was within age.) In old English practice. A writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and after his death, his heir had the same remedy. *Reg. Orig.* 298 b. *F. N. B.* 192, G. *Litt. sect.* 406. *Co. Litt.* 247 b. *Roscoe's Real Act.* 93. Long superseded by the action of ejectment, and finally abolished in England, by statute 3 & 4 Will. IV. c. 27.

DUM FUIT IN PRISONA. L. Lat. (While he was in prison.) In old English practice. A writ of entry which lay to restore a man to the possession of lands which he had aliened under duress of imprisonment. *Roscoe's Real Act.* 93. 2 *Inst.* 482. Abolished with the preceding writ.

DUM FUIT NON COMPOS MENTIS. L. Lat. (While he was of unsound mind.) In old English practice. A writ of entry which lay for a man who had aliened his lands while he was of unsound mind, to recover them from the alienee.

Reg. Orig. 228 b. *F. N. B.* 202, C. 2
Bl. Com. 291. 3 *Reeves' Hist.* 31. *Termes de la Ley.* *Roscoe's Real Act.* 93. Abolished with the preceding writ.

DUM RECENS FUIT MALEFICIUM (FACTUM). Lat. While the offence was fresh. A term employed in the old law of appeal of rape. *Bract.* fol. 147.

DUM SOLA. Lat. While sole, or single. *Dum sola fuerit*; while she shall remain sole. *Dum sola et casta vixerit*; while she lives single and chaste. Words of limitation in old conveyances. *Co. Litt.* 235 a.

DUMETA. Lat. In old English law. A thicket. *Fleta*, lib. 1, c. 24, § 8.

DUMMODO. Lat. Provided that; so that. A word of limitation in old conveying. 10 *Co.* 41 b. *Co. Litt.* 235 a. One of the apt words of reserving a rent. *Co. Litt.* 47 a. *Dummodo solverit talem redditum*; provided he shall pay such a rent. *Id.* 235 a.

DUN. Sax. [L. Lat. *duna*, *dunum*.] A hill of small elevation; a low hill. *Domesday.* *Co. Litt.* 4 b. Places in England, the names of which end in *dun*, or *don*, (Lat. *dunum*), are supposed to have been so called from their elevated situation. *Id.* *Cowell.* *Spelman*, voc. *Dunum*. Hence banks, or elevations along the sea-shore, are called *dunns*.

DUNA. L. Lat. In old records. A bank of earth cast up; the side of a ditch. *Cowell.* *Chartular.* *Glaston.* MS. 75, cited *ibid.*

DUNELM. An abbreviation of *Dunelmia*, Durham. 1 *Inst. Cler.* 28.

DUNK. L. Fr. Then. A corrupted form of *donque*. See *Fet Assaver*, passim.

DUNUM. L. Lat. A hill or rising ground. *Spelman.* See *Dun*.

Duo non possunt in solido unam rem possidere. Two cannot possess one thing in entirety. *Co. Litt.* 368.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas, ratio et auctoritas. There are two instruments for confirming or impugning all things,—reason and authority. 8 *Co.* 16, *The Prince's case*.

DUODECIMA MANUS. L. Lat. [L. Fr. *dozime meyn*, *dudzime main*.] The twelfth hand; twelve hands, or twelve-hand. The oath of twelve men, (including the party himself, though Britton makes it to be exclusive,) by whom a defendant was formerly allowed to make his law. *Glanv.* lib. 1, c. 9. *Bract.* fol. 410. *Britt.* c. 27.

3 *Bl. Com.* 343. *Il covint aver ous luy xi maynz de jurer oue luy*, &c.; it behooves to have with him eleven hands to swear with him, &c. *Dyversite des Courts*, fol. 305. Called *hands*, because the hand was always used in making oath, and generally by laying it on the gospels. See *Manus*, *Hand*, *Compurgator*, *Wager of law*.

DUODECEMVIRALE JUDICIUM. L. Lat. The trial by twelve men, or by jury. Applied to juries *de medietate linguae*. *Molloy de Jur. Mar.* 448.

DUODENA. L. Lat. In old records. A jury of twelve men. *Cowell*.

A dozen. *Duodena panis*; a dozen of bread. *Towns. Pl.* 170. *De tribus duodenis fili*; of three dozen of thread. *Id.* 104.

ΔΥΟΚΑΙΔΕΚΑΔΕΑΤΟΝ. Gr. The name given to the law of the Twelve Tables, in the Greek of the civil law. *Cod.* 6. 4. 15.

DUPLA. Lat. In the civil law. Double the price of a thing. *Dig.* 21. 2. 2. *Simplam pro dupla.* *Id.* 21. 2. 37. 2.

DUPLEX. Lat. Double. Applied to a plea. *Freem.* 321.

DUPLEX QUERELA. L. Lat. (A double complaint, or double quarrel.) In English ecclesiastical law. A complaint in the nature of an appeal, made by a clerk, or other person, to the archbishop of the province, against an inferior ordinary, for delaying or refusing to do justice in some ecclesiastical cause; as to give sentence, institute a clerk, &c. *Cowell.* *Blount.* *Tomlins.* 3 *Bl. Com.* 247. So called because most commonly made against both the judge, and him at whose suit justice is denied or delayed. *Cowell*.

DUPLEX VALOR MARITAGII. L. Lat. In old English law. Double the value of the marriage. Infant wards who married without their guardians' consent forfeited double the value of the marriage. 2 *Bl. Com.* 70. *Litt.* sect. 110. *Co. Litt.* 82 b. See *Maritagium*. Called in Scotch law, the *double avail* of marriage. See *Avail*.

DUPLICARE. Lat. To double or repeat; to make twice or in two parts, as the old charters were executed.* *Fleta*, lib. 2, c. 64, § 2. *Si [charte] communes sint, duplicari debent, quod quilibet habeat partem suam*; if the charters be common, [i. e. involving mutual covenants,] they ought to be executed in two, so that each party may have his part. *Bract.* fol. 33 b. *Conventio duplicata*; a duplicate covenant or agreement. *Id.* fol. 169.

DUPLICATE. [Lat. *duplicatum*, from *duplicare*, to double.] That which is doubled, or twice made; an original instrument repeated.* A document which is the same as another, in all essential particulars. Tindal, C. J. 7 *Man. & Gr.* 93. Maule, J. *Id.* 94. Sometimes defined to be the copy of a thing; but, though generally a copy, a duplicate differs from a mere copy, in having all the validity of an original. Nor, it seems, need it be an exact copy. See *supra*. Defined also to be the *counterpart*, of an instrument; but in indentures there is a distinction between *counterparts* executed by the several parties respectively, each party affixing his or her seal to only one counterpart, and *duplicate originals* each executed by all the parties. 7 *Man. & Gr.* 91, note. See 2 *Id.* 518, note. And see *Counterpart*. The old indentures, charters, or chirographs, seem to have had the character of duplicates. See *Duplicate*.

DUPLICATIO. Lat. [from *duplicare*, to double, or follow as the *second* in order.] In the civil law. The defendant's answer to the plaintiff's replication; corresponding to the rejoinder of the common law. *Inst.* 4. 14. 1. *Heinecc. El. Jur. Civ. lib.* 4, tit. 14, § 1284. The fourth pleading in the series. 3 *Bl. Com.* 310. Translated *duplication*. *Hallifax, Anal.* b. 3, c. 5, num. 7. In Scotch practice, *duply*. Bracton and Fleta call this pleading *triplicatio*. *Bract. fol.* 400 b, 428 b, 57 b. *Fleta*, lib. 6, c. 36, § 10.

DUPLICATIO. Lat. A doubling.

Duplicacionem possibilitatis lex non patitur. The law does not allow the doubling of a possibility. 1 *Roll. R.* 321.

DUPLICATUM JUS. L. Lat. Double right. *Bract. fol.* 283 b. See *Droit droit*.

DUPLICITY. In pleading. That fault which consists in employing two or more distinct allegations or answers, where one is sufficient.* *Steph. Plead.* 251, 252. See *Double plea*.

DUPLUM. Lat. In civil and old English law Double. *Damna in duplo*; double damages. *Stat. Westm.* 2, c. 26.

DUPPLY. [from Lat. *duplicatio*, q. v.] In Scotch pleading. The defendant's answer to the plaintiff's replication.

To **DUPPLY.** In Scotch pleading. To rejoin. "It is *duplyed* by the pannel." 3 *State Trials*, 471.

DUPONDIUS. Lat. In the civil law.

Two pounds; the double of an *as*; twenty-four *uncia*. *Calv. Lex. Jurid. Inst.* 2. 14. 8. *Heinecc. El. Jur. Civ. lib.* 2, tit. 14, § 541.

DURANTE. L. Lat. During. A word of limitation in old conveyances. *Co. Litt.* 234 b. *Durante viduitate*; during widowhood. *Id. ibid.* *Durante virginitate*; during virginity. *Id. ibid.* *Durante vita*; during life. *Id. ibid.*

DURANTE ABSENTIA. L. Lat. During absence. 2 *Bl. Com.* 503. See *Administration*.

DURANTE BENEPLACITO. L. Lat. During good pleasure. The tenure by which the judges in the superior courts in England formerly held their commissions. 1 *Bl. Com.* 267, 342. 2 *Steph. Com.* 492.

DURANTE MINORE ÆTATE. L. Lat. During minority. 2 *Bl. Com.* 503. 5 *Co.* 29, 30. See *Administration*. Words taken from the old form of letters of administration. 5 *Co. ub. sup.*

DURANTE VIDUITATE. L. Lat. During widowhood. 2 *Bl. Com.* 124. *Durante casta viduitate*; during chaste widowhood. 10 *East*, 520. See *Durante*.

DURESME. L. Fr. Durham. *Yearb. P.* 1 Edw. II. 6.

DURESS. [L. Fr. *duresse*; Lat. *durities*, *duritia*.] Constraint; compulsion. The state of compulsion or necessity in which a person is induced, by the restraint of his liberty, or menace of bodily harm, to execute a deed, or do any other legal act, or to commit a misdemeanour; and which constraint may afterwards be taken advantage of, to avoid such act, or its consequences. 1 *Bl. Com.* 130. 2 *Id.* 292. 4 *Id.* 30. 1 *Steph. Com.* 130, 442. 2 *Ken's Com.* 453. *Termes de la Ley*.

DURESS OF IMPRISONMENT. The wrongful imprisonment of a person, or the illegal restraint of his liberty, in order to compel him to do some act. 1 *Bl. Com.* 130, 131, 136, 137. 1 *Steph. Com.* 137. 2 *Ken's Com.* 543.

DURESS PER MINAS. L. Lat. Duress by threats. The use of threats and menaces to compel a person, by the fear of death, or grievous bodily harm, as mayhem or loss of limb, to do some lawful act, or to commit a misdemeanour. 1 *Bl. Com.* 130. 4 *Id.* 30. 4 *Steph. Com.* 83. See *Metus*.

To **DURESS.** To subject to duress. A word used by Lord Bacon. "If the party *duressed* do make any motion," &c. *Bacon's Max.* 89, reg. 22.

DURESSE, *Duresce*. L. Fr. Duress, (q. v.) Hardship. *Graunt* duress *serroit*; it would be a great hardship. *Yearb.* P. 2 Edw. II. 39.

DURESSOR. One who subjects another to duress; one who compels another to do a thing, as by menace. A word used by Lord Bacon. *Bac. Max.* 90, reg. 22.

DURITIA. Lat. [from *durus*, hard.] In old English law. *Duress*. 3 *Leon.* 239.

DURSLEGI, *Dursley*. [from Germ. *durte*, dry, and Sax. *slege*, a stroke.] In old European law. Blows without wounding or bloodshed; dry blows or beating. *Spelman*.

DUS. L. Fr. Duke. *Kelham*.

DUSCENS. L. Fr. Two hundred. *Kelham*.

DUSESME, *Duzim*. L. Fr. Twelfth. *Kelham*.

DUSKES A CHOU QE. L. Fr. Until that. *Kelham*.

DUTIES. Rights due from persons. 1 *Bl. Com.* 123. See *Duty*.

DUTIES, in revenue law, in a large sense, is a word very nearly equivalent to *taxes*, embracing all impositions or charges levied on persons or things. 1 *Story on the Const.* § 952. *Id.* (Abr.) § 474.

In its more restrained sense, it is often used as equivalent to *customs*, and in this sense is nearly synonymous with *imposts*. *Id.* *ibid.* *Andrews on Rev. Laws*, § 133. See *Duty*.

DUTY. [Lat. *debitum*.] A thing due; that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than *debt*, although both are expressed by the same Latin word *debitum*. *Redfield, C. J.* 26 *Vermont R.* 725, 733. An inchoate right or duty may exist, which has not become ripened or perfected into a debt. *Id.* 736. *Duty* is the correlative of *right*.

A sum payable to government, on the importation or exportation of goods. See *Duties*.

DUUMVIRI. Lat. [from *duo*, two, and *vir*, men.] A general appellation among the ancient Romans, given to any magistrates elected in pairs to fill any office, or perform any function.* *Brandé*.

Duumviri municipales were two annual magistrates in the towns and colonies, having judicial powers. *Calv. Lex*.

Duumviri navales were officers appointed to man, equip and refit the navy. *Id.* *ibid.*

DUX. Lat. [from *ducere*, to lead.] In the Roman law. A leader or military commander. The commander of an army. *Dig.* 3. 2. 2, pr.

In later law. A military governor of a province. See *Cod.* 1. 27. 2. A military officer having charge of the borders or frontiers of the empire; called *dux limitis*, (*duces limitum*). *Cod.* 1. 49. 1, pr. *Id.* 1. 46. 4. *Id.* 3. 26. 7. At this period, the word began to be used as a title of honor or dignity.

In feudal and old European law. Duke; a title of honor, or order of nobility. 1 *Bl. Com.* 397. *Crabb's Hist.* 236. One who was invested by the prince with a dukedom or ducal fief, (*ducatu*). *Feud. Lib.* 2, tit. 10. The highest order of *capitanei regis* or crown vassals. *Id.* lib. 1, tit. 1, pr. The origin and history of this title are elaborately treated by *Spelman*, who observes that it was originally an official title, afterwards honorary, and finally feudal and hereditary. *Dux* is used in *Bracton*, as descriptive of the first order of subjects in the kingdom. *Sub eis* [*regibus*] *duces, comites, barones, &c.*; under them, dukes, earls, barons, &c. *Bract.* fol. 5 b.

DUZ, *Dus, Dug*. L. Fr. A leader. *Kelham*.

DUZ. L. Fr. Due. *Kelham*.

DUZE, *Dusze*. L. Fr. Twelve. *Kelham*.

DUZEIN. L. Fr. Twelve; a jury of twelve. *La petite duzein*; the petty jury. *Yearb.* T. 4 Edw. III. 21.

DWELLING-HOUSE, [L. Lat. *domus mansionalis*.] In conveyancing, includes all buildings attached to, or connected with the house. 2 *Hilliard's Real Prop.* 338, and note.

In the law of burglary. A house in which the occupier and his family usually reside, or, in other words, dwell and lie in. *Wharton's Am. Crim. Law*, 357. Otherwise called a mansion-house. 3 *Serg. & R.* 199. A building or out-house standing near enough to the dwelling-house to be used with it, as appurtenant to it, or standing in the same yard, whether the yard be enclosed or open, is part of the dwelling-house, so that burglary may be committed within it. 1 *Devereux* (N. C.) *R.* 253. 1 *Hayward*, 242, 102. See 2 *N. Y. Rev. St.* [669], 557, §§ 16, 17. See *Burglary*. A place permanently used by the occupier or any member of his family, as a place to

sleep in. Goldthwaite, J. 26 *Alabama R.* 152.

DY. L. Fr. Due; just. *Kelham.*

DYENT. L. Fr. (They) say. *Kelham.*

DYING DECLARATIONS. In the law of evidence. Declarations made in extremity, (*in extremis*), when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. Lord C. B. Eyre, 2 *Leach's Cr. C.* 563, case 218. 1 *Parker's Crim. R.* 11. See *Id.* 299. 1 *Jones' Law R.* 251, 274. These are admissible as evidence only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. 1 *Greenl. on Evid.* § 156. And they are admissible in evidence only where the party making them thinks that he is in a dying state, and does not expect to survive the injury. 1 *Parker's Cr. R.* 302. See 23 *Mississippi R.* 322. *United States Digest*, Evidence.

"DYING WITHOUT ISSUE," or "DIE WITHOUT ISSUE," at common law, means an indefinite failure of issue, and not a dying without issue living at the time of the death of the first taker. See *Broom's Max.* [432]. 6 *Ohio St. R.* 563. This rule has been adopted in several of the United States. See 16 *Johns. R.* 409. 11 *Wendell's R.* 259. 5 *Paige's R.* 514. In others, however, as in Ohio and Kentucky, it has been rejected. 6 *Ohio St. R. ub. sup.* 14 *B. Monroe's R.* 662. In Mississippi it has been abolished by statute. See 24 *Mississippi R.* 350, 351. And in England it is now provided by stat. 7 Will. IV. and 1 Vict. c. 26, s. 29, that the words "die without issue," or other words which may import a want or failure of issue, shall be construed to mean dying without issue living at the time of the death of the person, and not an indefinite failure of issue, unless a contrary intention appears by the will. See the late case of *Parish's Heirs v. Ferris*, 6 *Ohio St.* (Critchfield's) *R.* 563, in which the subject is considered at length.

DYS, *Dyz.* L. Fr. Ten. *Kelham.*

DYVOUR. In Scotch law. A bankrupt. 1 *Forbes' Inst.* part 2, b. 3, ch. 1, tit. 10. A debtor who applies for the benefit of the *cessio bonorum*; and who, although he obtained a *cessio*, might formerly

be compelled to wear a peculiar habit as his outer dress, one-half brown, the other yellow. *Bell's Dict.* And see *Skene de Verb. Signif.*

E.

E, at the commencement of words having the first syllable *En* or *Em*, properly denotes a derivation from the French, as I denotes a derivation from the Latin. Thus, *Enclose*, *Encumber*, *Endow*, *Enfranchise*, *Engross*, *Enjoin*, *Enlarge* and *Enroll* are closely formed from the L. Fr. *Encloser*, *Encombrer*, *Endower*, *Enfranchir*, *Engrosser*, *Enjoindre*, *Enlarger* and *Enrouler*, (qq. v.) On the other hand, *Indict*, *Inform*, *Infringe*, *Inquire* follow the L. Lat. *Indictare*, *Informare*, *Infringere* and *Inquirere*, (qq. v.) The orthography, however, has not been uniform. Thus, there seems to have been a tendency, from an early period, to the use of I, rather than E, even in words wholly and properly of French origin; as in *Impart*, *Implead* (qq. v.) and *Imprison*, which being derived from the pure L. Fr. *Emparler*, *Empleder* and *Emprisonner*, should properly have been spelled with an E. This may have arisen from the sound of the initial letter, the E being probably pronounced I, as it is at present. Hence we meet, in the old books, with *Ingross*, *Injoin*, *Inrol*, *Intitle*, *Inlarge*, *Imploy* and *Imbezzle*, which are no longer used. On the other hand, we meet with such words as *Encur*, *Endebted*, *Endictment*, *Enfant*, *Enform*, *Enter marriage*, *Enter lining* and others, which are equally obsolete. On the whole, the gradual tendency in modern orthography has been to the use of I rather than E, as an initial letter. In a few cases, however, both forms are still employed. Thus, *Endorse* and *Indorse*, (qq. v.) continue to have their respective advocates, although the latter enjoys the support of standard authority.

E, in the Latin of the civil law, frequently occurs in the place of i; as in the words *intelligere*, *neglegere*, *deminuere*; for *intelligere*, *negligere*, *diminuere*. So in the end of words, *defensione*, *exceptione* and others are constantly used for *defensionis*, *exceptionis*, &c. *Calv. Lex. Jurid.*

E, in the civil law and the old books, is constantly used for the diphthong æ, as in *ceterum*, *hereditas*, and other words. *Dig. and Cod. passim. Bract. passim. Etas* is used for *ætas*, throughout *Magna Charta*.

E. L. Fr. A contraction of *et*, (and). *Arsions e homicides. Artic. sup. Chart. c. 17. E volums ke*; and we will that. *Conf. Cart. 25 Edw. I.*

E. Lat. From; out of. See *Ex*.

Ea est accipienda interpretatio, quæ vitio caret. That interpretation is to be received [or adopted] which is free from fault [or wrong]. The law will not intend a wrong. *Bacon's Max. 17, (in reg. 3).*

EA INTENTIO. L. Lat. With that intent. Held not to make a condition, but a confidence and trust. *Dyer, 138 b.*

Ea quæ, commendandi causa, in venditionibus dicuntur, si palam appareant, venditorem non obligant. Those things which are said on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. *Dig. 18. 1. 43, pr.*

Ea quæ dari impossibilia sunt, vel quæ in rerum natura non sunt, pro non adjectis habentur. Those things which are impossible to be given, or which are not in the nature of things, are regarded as not added [as no part of an agreement]. *Dig. 50. 17. 135.*

Ea quæ raro accidunt non temere in agendis negotiis computantur. Those things which rarely happen are not to be taken into account in the transaction of business, without sufficient reason. *Dig. 50. 17. 64.*

EAGE. L. Fr. Age. *Kelham.*

EALDER. Sax. [Lat. *senior*.] In Saxon law. Elder. A term generally used to express age, and sometimes office, though the latter was usually denoted by *ealdorman*, (q. v.) *Spelman, voc. Aldermannus.*

EALDERMAN, *Ealdorman*. Sax. [L. *aldermannus*; Lat. *senior*.] Elder man, or elder. A very ancient title, applied among the Saxons to a great variety of officers, (see *Aldermannus*); the term being indicative not so much of age, as of experience and fitness for public station. *L.L. Edw. Conf. c. 35. Spelman, voc. Aldermannus.* Used, in particular, as the title of a high officer having the government of a county, or shire, otherwise called *shireman*, and by some writers thought to be the same with the *eorle*, or *earl* of later times. *Co. Litt. 168 a. 1 Reeves' Hist. Eng. Law, 6. Gilb. C. Pleas, Introd. p. 3, note. Id. 57. 1 Bl. Com. 116, 398. 3 Id. 36. 3 Steph. Com. 3. Crabb's Hist. 24.* He had judicial powers and presided with the bishop in the *shiremote*, (Sax. *scyre gemote*), or county court; and *Spelman* is of opinion

that he was properly the chief judicial officer or judge of the county, (*prælorem seu justitiarium comitatûs*), answering to the *sagibaro* of the Salian law; and that he was a different officer from the *earl* or *comes*, (who properly was the governor of the county,) occupying a middle rank between him and the *vice-comes*, or earl's deputy. *Spelman, vocc. Aldermannus, Aldermannus comitatus.* A law of Athelstan, cited by *Spelman*, (voc. *Eorla*), in which *eorles* and *ealdormannes* are both mentioned, strongly confirms this idea; but the ancient authorities are not uniformly clear on this point. The word *ealdorman* is sometimes erroneously written (with an *r*), *earlderman*, the first syllable of which may have led to the idea that it denoted the same officer as *earl*. See *Earl*.

EAR GRASS. In English law. Such grass which is upon the land after the mowing, until the feast of the Annunciation after. *3 Leon. 213.*

EARL. [Sax. *eorl, eorle*; Sc. *erll*; L. Lat. *comes, eorla*; Fr. *comte*; L. Fr. *countee*.] The most ancient title of nobility in England, and formerly the highest, (answering to the Lat. *comes*); but now the third, ranking between a marquess and a viscount. *1 Bl. Com. 398. 3 Steph. Com. 3.*

* * * *Earl* is said to be a Danish word, (sometimes written *jarl*, and derived from *ear*, or *ar*, honor,) which was introduced into England by the Danes at the time of their invasion. As it had nearly the same signification with the Saxon *ealdorman*, it was adopted by the Saxons as the name of that officer, and was afterwards applied to the *comes* or count of the Normans. *Spelman, vocc. Eorla, Aldermannus. Camden Brit. tit. Ordines.* The terms *count*, and *countee*, continued to be used by the Normans, for some time after the Conquest, as the titles of the governor or chief officer of a county, but were finally supplanted by the English *earl*; although *count* has left its traces in the words *county*, an earl's territory; *countess*, an earl's wife; and *viscount*, an earl's deputy; the two latter being also subsisting titles of nobility. See *Count, Viscount*.

After the office of *earl* or *comes* was made hereditary by William the Conqueror, the title became the highest dignity in the kingdom. At first it was territorial, being annexed either to the office itself, or to the possession of certain lands held of the

crown. When the earl relinquished the government of the county, the title continued to be one of territorial dignity as annexed to the lands he held; but it gradually lost this character, also, and finally became what it now is, a mere personal dignity annexed to the family of the possessor and independent of land. *Home's* (Lord Kames) *Brit. Antiq. Essay* III. *Crabb's Hist.* 235, chap. xvi. *Cruise's Dig.* tit. *Dignities.* 1 *Ld. Raym.* 10, 13. It now merely confers nobility and an hereditary seat in the House of Lords. *Wharton's Lex.*

EARLDOM. [L. Lat. *comitatus.*] The office, jurisdiction, or dignity of an earl, (*comes*). An earldom originally consisted in dignity, office, and the possession of lands. 1 *Ld. Raym.* 10, 13. It is now a mere personal dignity, without office annexed, and independent of any land. See *Earl, Comitatus.*

EARL MARSHAL. [L. Lat. *comes mariscallus.*] A great officer of state in England, who anciently presided in the court of chivalry, or court of honor. 3 *Bl. Com.* 68. 4 *Id.* 267. Since the disuse of that court, the office, which still exists, has been confined to the adjusting armorial ensigns, determining the rights of place and precedence, marshalling and conducting coronations, marriages and funerals of the royal family, and proclaiming war and peace. *Crabb's Hist.* 553, chap. xxxiii.

EAR-MARK. A mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear; a mode of marking sheep and other animals. "The *dictum* that money has no ear-mark must be understood in the same way, i. e. as predicated only of an undivided and undistinguishable mass of current money. But money in a bag or otherwise kept apart from other money, guineas or other coin marked, (if the fact were so,) for the purpose of being distinguished, are so far *ear-marked* as to fall within the rule on this subject," &c. Lord Ellenborough, 3 *M. & S.* 575.

EARNEST. [Lat. *arrha, arra, arræ.*] A part of the price of goods sold, or a portion of the goods themselves, delivered by one of the parties to a contract of sale to the other, in order to bind the contract.* A token or pledge passing between the parties, by way of evidence, or ratification of the sale. 2 *Ken's Com.* 495, note.

2 *Bl. Com.* 447, 448. 2 *Steph. Com.* 121, and note.—A sum advanced by the buyer of goods, in order to bind the seller to the terms of the agreement. *McCulloch's Dict.* See *Arrha, Denarius Dei.*

Earnest was in use in the early ages of the English law, as a means of binding the parties, and completing the sale, but has fallen into very general disuse in modern times. 2 *Ken's Com.* 495, note. It is however still given in some parts of England, on hiring farm and household servants at the "statutes" or meetings for that purpose; the money paid being otherwise called the *fastening penny*, though now a shilling. *Howitt's Rural Life of England*, 416, (Phil. ed. 1841).

EASEMENT. [L. Lat. *aisiamentum, aysiamentum*, from Fr. *aist*, a convenience.] A liberty, privilege or advantage in land, without profit, existing distinct from an ownership of the soil. Prentiss, C. J. 3 *Vermont R.* 279. 1 *Crabb's Real Prop.* 125, § 115. The right to use a public highway is a public easement. Swift, J. 1 *Connecticut R.* 103, 132. 2 *Smith's Leading Cas.* 98, (Am. ed. note).

A private easement is a privilege, service, or convenience, which one neighbor has of another, by prescription, grant or necessary implication, and without profit; as a way over his land, a gateway, water-course, and the like. *Kitch.* 105. 3 *Cruise Dig.* 484. Otherwise defined as "a right of accommodation in another's land;" "a right which one man has to use the land of another for a special purpose." *Barton's Real Prop.* 361, pl. 1165. 3 *Ken's Com.* 434. A species of what the civil law terms *servitudes* (*servitutes*). *Inst.* 2. 3. *Gloss.* lib. 12, c. 14. *Bract.* fol. 220 b, lib. 4, tr. 1, c. 37. See *Aisiamentum, Servitude.* See *Gale & Whalley on Easements*, per tot. *United States Digest*, Easement.

EAST GREENWICH. The name of a royal manor in the county of Kent, England; mentioned in royal grants or patents, as descriptive of the tenure of free socage. "To be holden of us, our heirs and successors, &c. of our manor of East Greenwich, in our county of Kent, in free and common socage, and not in *capite*, nor by knight's service." *Patent of New-England*, 18 Jac. I.

EASTER TERM. [L. Lat. *terminus Pasche.*] In English practice. One of the four terms of the superior courts in England, formerly called a moveable term,

but now fixed, beginning on the 15th April, and ending on the 8th of May in every year. *Stat. 11 Geo. IV. 1 Will. IV. c. 70. 3 Chitt. Gen. Pr. 91.*

EAT INDE SINE DIE. L. Lat. (*Quod eat, &c.*; that he go thereof without day.) In practice. Words anciently used in recording a judgment rendered for a defendant, as the corresponding English words still are; signifying that he is dismissed or permitted to go out of court, without any further day, or adjournment; the action being at an end. *Yearb. M. 1 Edw. II. 2. Id. T. 1 Edw. II. 11. 3 Bl. Com. 316, 399. 3 Steph. Com. 636.* Held to be of the same effect with *sit inde quietus*. *Cro. Jac. 211.* Where there were several defendants, the form was, *eat inde sine die, &c.* *5 Mod. 148.* See *Adjournment, Continuance, Day, Dies.*

EAUE, Eawe, Eaw, Awe, Ewe. L. Fr. Water. *Kelham. Yearb. P. 8 Edw. III. 9.* See *Ewe.*

EAUX, Eaus. L. Fr. They; them. *Eaux meismes*; themselves. *Kelham.*

EAVES DROPPING. In English criminal law. The offence of listening under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. *4 Bl. Com. 168.* It is a misdemeanour at common law, indictable at sessions, and punishable by fine and finding sureties for good behaviour. *Ibid. Steph. Crim. Law, 109. Lewis' U. S. Crim. Law, 233.*

EBBA. L. Lat. In old English law. *Ebb. Ebba et fluxus*; ebb and flow of tide; ebb and flood. *Bract. fol. 255, 338.* The time occupied by one ebb and flood, was anciently granted to persons essoigned as being beyond sea, in addition to the period of forty days. *Id. ibid. See Fleta, lib. 6, c. 8, § 2.*

EBEREMORD, Eberemorth. Sax. [from *æbere*, manifest, and *mord*, killing.] In Saxon law. Open killing or murder, as distinguished from manslaughter. *LL. Hen. I. c. 13.* Called *open*, not because openly perpetrated, but because the fact of its perpetration was open or manifest to all. *Spelman. See Aberemurder.*

EBRIEUX. L. Fr. Hebrew. *Kelham.*

ECCE. Lat. See; behold; look. A word calling attention to a proposition or illustration. *Fleta, lib. 3, c. 2, § 13; c. 9, § 18.*

ECCE modo mirum! quod fœmina fert breve regis, Non nominando virum conjunctum robore legis.

Behold, now, a wonder! that a woman bears, [or has] the king's writ, not naming her husband, though united to her by the strong bond of the law. An exclamation in the form of a rhyming Latin couplet, expressive of surprise that a married woman could, in any case, sue without her husband. Quoted by Lord Coke, and said to have been occasioned by the case of *Belknap v. Lady Weyland. 2 Hen. IV. 7. Co. Litt. 132 b, 133 a. 2 Kent's Com. 154.*

ECCHYMOSIS. Græco-Lat. [from Gr. *εκχυσω*, to pour out.] In medical jurisprudence. An effusion of blood under the skin. *2 Beck's Med. Jur. 15—17. Taylor's Med. Jur. 181.*

ECCLESIA. Lat. [from Gr. *ἐκκλησία*, from *ἐκκαλέω*, to call out; L. Fr. *eglise, egglise.*] In English law. A church; a place of religious worship, (*templum, seu domus qua fideles conveniunt, ritus divinos celebraturi*). *Spelman.* Called by Lord Coke, "the dwelling-house of Almighty God;" (*ecclesia est domus mansionalis Omnipotentis Dei*). *2 Inst. 164. See Church.*

A parsonage. *F. N. B. 32, H.* That is, the living or benefice. *Bract. fol. 52.* Bracton says the common people in his time used *ecclesia*, which properly denoted the material building, (*ex lignis et lapidibus*), in the sense of advowson or right of presentation, and that it was so construed *propter eorum simplicitatem. Id. ibid. Id. fol. 95.*

Εκκλησία was used among the ancient Greeks, as *curia* and *senatus* among the Romans, to denote a public assembly, (*pro cœtu et congregatione*), as well as the place of meeting itself (*pro loco in quem convenitur*). *Spelman. See Calvin's Lex. Jur.*

Ecclesia ecclesiæ decimasolvere non debet. The church ought not to pay tithes to the church. *Cro. Eliz. 479.*

Ecclesia non moritur. The church does not die. *2 Inst. 3.*

Ecclesia magis favendum est quam personæ. The church is more to be favored than the parson. *God. Rep. 172.*

ECCLESIASTICAL. Belonging to, or connected with the church. *Tomlins.*

ECCLESIASTICAL CORPORATIONS. In English law. Corporations whose members are entirely spiritual persons, and incorporated as such; as bishops, certain deans and prebendaries, archdeacons, parsons and vicars, which are sole corporations; and deans and chapters, which are bodies aggregate. *1 Bl. Com. 470.*

3 *Steph. Com.* 169. What are called in the United States, *religious corporations*, belong to this division. 2 *Kent's Com.* 274.

ECCLESIASTICAL COURTS. [L. *Lat. curiæ christianitatis.*] Courts held in England by the king's authority, as supreme head of the church, for the consideration of matters chiefly relating to religion. *Jacob. Tomlins.* 4 *Inst.* 321. They are the arch-deacon's court, the consistory court, the court of arches, the court of peculiars, the prerogative court, and the privy council, which is the great court of appeal. 2 *Chitt. Gen. Pr.* 494. *Wharton's Lex.* See *Archdeacon's court*, and the other titles. These courts have recently been divested of their jurisdiction in testamentary and matrimonial causes, by the statute 20 & 21 Vict. c. 77, § 3, c. 85, § 2; Aug. 25 and 28, 1857.

ECCLESIASTICAL LAW. That species of law which is administered by the ecclesiastical courts. The ecclesiastical law of England is compounded of these four main ingredients; the civil law; the canon law, the common law, and the statute law. *Burn's Eccl. Law*, pref. See 5 Co. *Caudrey's case*.

ECCLIA. A contraction of *Ecclesia*. 1 *Instr. Cler.* 10.

ECDICUS, pl. **ECDICI.** Græco-Lat. [from Gr. *ἐδικος*, from *ἐκ*, and *δικη*, justice.] The attorney, proctor, or advocate of a corporation. *Episcoporum ecdici*; bishops' proctors; church lawyers. 1 *Reeves' Hist.* 65.

ECHANTILLON. Fr. In French law. One of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the tally, the other *echantillon*. *Poth. Obl.* part 4, ch. 1, art. 2, § 8.

ECHEVIN. Fr. In French law. A municipal officer corresponding with alderman or Burgess, and having in some instances a civil jurisdiction in certain causes of trifling importance. *Meredith's Emerigon on Ins.* 43, note.

ECHOUEMENT. Fr. In French marine law. Stranding. *Emerig. Tr. des Ass.* ch. 12, s. 13, § 1.

E CONTRA. Lat. On the other side; of the opposite opinion. *Dyer*, 10 b. *Keilw.* 18. 1 *Show.* 208.

E CONVERSO. Lat. Conversely; reciprocally. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 1. *Perk.* ch. 2, s. 230. *Bacon's Read. Uses, Works*, iv. 202.

ECRIVAIN. Fr. In French marine law. The clerk of a ship. *Emerig. Tr. des Ass.* ch. 11, sect. 3, § 2.

EDERE. Lat. To give out; to put forth; to publish; to declare; to propose. *Calv. Lex. Jurid.* See various applications of the word, *Id. ibid.* And see *Dig.* 2. 13. *Id.* 50. 16. 89. 2.

EDICTAL CITATION. In Scotch law. A citation published at the market-cross of Edinburgh, and pier and shore of Leith. Used against foreigners not within the kingdom, but having a landed estate there, and against natives out of the kingdom. *Bell's Dict.*

EDICTUM. Lat. [from *edicere*, to publish or declare.] In the Roman law. An edict; a mandate, or ordinance. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of *constitutiones principis*. *Inst.* 1. 3. 6. *Cooper's Notes*, in loc. An edict was a mere voluntary constitution of the emperor; differing from a rescript in not being returned in the way of answer; and from a decree, in not being given in judgment; and from both, in not being founded upon solicitation. *Tayl. Civ. Law.* 233.

A general order published by the prætor, on entering upon his office, containing the system of rules by which he would administer justice during the year of his office. *Dig.* 1. 2. 2. 10. 1 *Mackeld. Civ. Law*, 21, 29, §§ 31, 40. *Tayl. Civ. Law*, 214. See *Calv. Lex. Jur.*

EDICTUM PERPETUUM. Lat. In the Roman law. The perpetual edict. A compilation or system of law in fifty books, digested by Julian, a lawyer of great eminence under the reign of Adrian, from the Prætor's edicts and other parts of the *Jus Honorarium*. All the remains of it which have come down to us, are the extracts of it in the Digests. *Butler's Hor. Jur.* 52.

EDITUS, *Aeditus.* L. Lat. [from *edere*, to put forth, or publish.] In old English law. Put forth; published or promulgated; passed as a law. *Reg. Jud.* 22. *Contra formam statuti*—editi et provisi; against the form of the statute—made and provided. *Rast. Entr.* 598, 599.

Brought forth or born, as a child. *Bract.* fol. 278.

EE. A termination giving to the words in which it occurs a passive sense, denoting the party to whom an act is done, or on whom a right is conferred; the receiving party; as—"or" denotes the acting party.

Thus *feoffee*, (*feoffatus*) denotes the party to whom a feoffment is made; *donee* (*donatorius*), the party who receives a gift in tail; *lessee*, (*firmarius*), the party to whom a lease is made, &c. 2 *Bl. Com.* 140, note (a). *Litt.* sect. 57. These words have long been in use, and many others have, in modern times, been constructed on the same principle; as *obligee*, *vendee*, *drawee*, and even *promisee*, *confirmer*, *abandonnee*, *transferee*, *loanee*, *licensee*, and *usee*. *Ee* corresponds, in many cases, with the Latin termination—*atus*, and the French—*é*.

E'E. L. Fr. A common contraction of *estre*, to be, or *este*, been. *Ceux q' av'o't e'e* *somo's*; those who shall have been summoned. *Britt.* c. 1. *E'e faites*; to be done. *Id.* c. 27.

EES. L. Fr. Bees. *Britt.* c. 33.

EFFECTS. Personal estate or property. This word has been held to be more comprehensive than the word *goods*, as including fixtures, which "goods" will not include. 7 *Taunt.* 188. 4 *J. B. Moore*, 73, 4 *B. & A.* 206. 2 *Chitt. Bl. Com.* 384, note.

In the second title of Part I. ch. xviii. of the Revised Statutes of New-York, it is declared that the term "effects," as used in this title, shall be construed to embrace every species of property, real and personal, including things in action. 1 *Rev. St.* [599], § 64.

In wills, the word *effects* is equivalent to property, or worldly substance, and if used *simpliciter*, as in a gift of "all my effects," will carry the whole personal estate. 15 *Vesey, Jr.* 507. *Ward on Legacies*, 209. The addition of the words "real and personal," will extend it so as to embrace the whole of the testator's real and personal estate. *Cowp.* 299. 3 *Bro. P. C.* 388. The word "effects," however, without the word "real," will not, *proprio vigore*, comprehend land, though followed by the words "of what nature, kind or quality soever." 2 *Powell on Dev.* (by Jarman,) 167. 2 *M. & S.* 448. 15 *Mees. & W.* 450. See 13 *Vesey, Jr.* 39. 15 *East*, 394. 14 *Howard's R.* 421.

EFFORCER. L. Fr. To aid or assist. *Kelham*.

EFFORCIALITER. L. Lat. Forcebly.

EFFRACTORES. Lat. [from *effringere*, to break open or out.] In civil and old European law. Burglars; house-breakers; those who break into houses to steal; (*qui*

furandi causâ domos effringunt). *Spelman. Cowell. Effractor*; a burglar. *Bract.* fol. 105. *Calv. Lex. Jur.*

Prison-breakers; those who break out of prison; (*qui se à carcere proripiunt*). *Spelman. Dig.* 47. 18. 1. See *Frac-tores*.

EFFUSIO SANGUINIS. Lat. In old English law. The shedding of blood; (*Sax. bloodwit*). The mulct, fine, wite, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. *Cowell. Tomlins.* See *Bloodwit*.

EGALTIE. L. Fr. Equality. *Litt.* sect. 253.

EGETEMENT. L. Fr. Ejectment. *Yearb. M.* 10 Hen. VI. 63.

EGETTER. L. Fr. To eject. *Ejetta*; ejected. *Yearb. M.* 10 Hen. VI. 63.

EGGLISE. L. Fr. Church. *Fet As-saver*, § 15.

EGO TALIS. Lat. I, such a one. Words used in describing the forms of old deeds. *Fleta*, lib. 3, c. 14, § 5.

EGREDIENS ET EXEUNS. L. Lat. In old pleading. Going forth and issuing out of (land). *Towns. Pl.* 17.

EGRESSUS. Lat. [from *egredi*, to go forth.] In old English law. A going forth; egress. *Stat. Mert.* c. 4. See *Accessus, Ingressus*.

EGUN. L. Fr. Any. *Kelham*.

Ei incumbit probatio qui dicit, non qui negat. The proof lies upon him who affirms, not upon him who denies. *Dig.* 22. 3. 2. This maxim of the civil law is adopted in the common law of evidence. 3 *Bl. Com.* 566. *Best on Evid.* 295, § 254. 1 *Greenl. on Ev.* § 74.

Ei nihil turpe, cui nihil satis. To him to whom nothing is enough, nothing is base. 4 *Inst.* 53.

EIA. L. Lat. [from *Sax. eage*, by changing *g* into *i* or *y*.] An island, or *ey*, (*Lat. insula*). So called, according to *Spelman*, from a supposed resemblance to the shape of an eye, or egg; the proper meanings of the *Sax. eage*. See *Ey*. A common termination of ancient names of towns, indicating an island, peninsula, or site near a river or water. *Spelman*.

EIDE. L. Fr. Aid; relief; judicial relief. *Kelham. Year Books*, *passim*.

EIENT, Eyent. L. Fr. (They) have; (they) shall have. *Stat. Westm.* 1, c. 15. *Artic. sup. Chart.* c. 2.

EIGNE, Eign, Eisme, Eygne, Aisme. L. Fr. The eldest, or first born. *Litt.* sect.

399. See *Bastard eigne*. *L'eign*; the elder. 1 *And. 3. L'eygne*. *Dyer*, 55.

EIGNESSE. L. Fr. [from *eigne*, elder; L. Lat. *einecia*, *ainetia*.] In old English law. Eldership. The privilege of an eldest sister, of choosing first on a partition of lands held in coparcenary. *Britt.* c. 72. 6 *M. & Gr.* 327, note.

EIK. In Scotch law. An addition. *Bell's Dict.* *Tomlins.* 1 *Forbes' Inst.* part 3, b. 1, ch. 1, tit. 2, sect. 1.

To EIK. In Scotch law. To add. 3 *Hov. St. Trials*, 619.

EINECIA, *Esnecia*. L. Lat. [L. Fr. *eignessee*.] In old English law. Eldership; the right or privilege of the first born. *Cowell*. See *Eignessee*, *Aisnecia*.

EINETIUS, *Enetius*, *Enitius*, *Eneyus*, *Aesnecius*. L. Lat. [from *eigne*, or *aisne*.] In old English law. The eldest or first born; (Lat. *primogenitus*). *Pars einetia*; the part or share of the eldest sister. *Spelman*.

EINS, *Eyns*, *Einz*. L. Fr. In. One who is in actual possession, is emphatically said to be in. See *In*. *Tenant à volenté*, *que est eins per lease de son lessor*; tenant at will, who is in by lease of his lessor. *Litt.* sect. 82. *Eins encounter la ley*; in against the law. *Id.* sect. 306. *Eins per tort*, *eins per title*; in by wrong, in by title. *Keilw.* 2, pl. 2. *Eins per descent*. *Litt.* sect. 403. *Eins per divers titles*. *Id.* sect. 662. *La ley luy adjudgera eins*; the law will adjudge him in. *Id.* sect. 659, 660.

In; into. *A mettre eins les bestes*; to put in the beasts. *Britt.* c. 54.

EINS CEO QUE. L. Fr. In this that; inasmuch as. *Britt.* c. 54. *Eins ceo* is translated by *Kelham*, when, unless, the same, rather, until.

EIRE, *Eyre*, *Eier*, *Eyer*. L. Fr. [from Lat. *iter*, by dropping the *t*.] In old English law. A journey anciently made by the justices, called justices in eyre, or justices itinerant, (*justitiarum in itinere*, or *itinerantes*), from one place to another, to administer justice. *Spelman.* *Co. Litt.* 293 b. Answering nearly to the modern circuit.

The court of the justices in eyre. *Co. Litt.* 293 a. See *Eyre*, *Iter*.

EIRENARCHA. Græco-Lat. [Gr. *ειρη*, *eiphrn*, from *eiphrn*, peace, and *αρχα*, government.] A name formerly given to a justice of the peace. See *Bacon's Works*, iv. 316. In the Digests, the word is written *Irenarcha*, (q. v.)

Eisdem modis dissolvitur obligatio que nascitur ex contractu, vel quasi, quibus contrahitur. An obligation which arises from contract or quasi contract, is dissolved in the same ways in which it is contracted. *Fleta*, lib. 2, c. 60, § 19.

EISNE, *Eysne*, *Aisne*. L. Fr. The eldest. *Co. Litt.* 166 b.

EISNETIA, *Einetia*. L. Lat. In old English law. The part or share of the eldest. *Co. Litt.* 166 b. See *Einecia*, *Einetius*.

EISSI. L. Fr. *Aa. Kelham*.

EISSIR. L. Fr. To go out of; to issue. *Kelham*.

EIT. L. Fr. *Haa. Le lessee eit possession*; the lessee has possession. *Litt.* sect. 460.

EJECT. [from Lat. *ejicere*, to throw out.] To cast, or throw out; to oust, or dispossess; to put or turn out of possession. 3 *Bl. Com.* 198, 199, 200.

EJECTION. [L. Lat. *ejectio*, from *ejicere*, q. v.] A turning out of possession. 3 *Bl. Com.* 199.

EJECTIONE CUSTODIÆ. L. Lat. [L. Fr. *ejectment de garde*.] In old practice. Ejectment of ward. A writ which anciently lay against him who turned out a guardian from any land during the minority of the heir. *Reg. Orig.* 162. *F. N. B.* 139, L. *Litt.* sect. 323. First mentioned in the statute of Westminster 2. 2 *Reeves' Hist. Eng. Law*, 208, 325.

EJECTIONE FIRMÆ. L. Lat. [L. Fr. *ejectment de ferme*.] Ejection, or ejectment of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger, ejected or ousted the lessee of his term, *ferme*, or *farm*, (*ipsum a firma ejecit*). In this case, the latter might have his writ of *ejection*, by which he recovered at first damages for the trespass only, but it was afterwards made a remedy to recover back the term itself, or the remainder of it, with damages. *Reg. Orig.* 227 b. *F. N. B.* 220, *F. G.* 3 *Bl. Com.* 199. *Litt.* sect. 322. *Crabb's Hist.* 290, 448. See 3 *Reeves' Hist.* 390. It is the foundation of the modern action of ejectment. See *Ejectment*, *Firma*, *Ferme*.

EJECTMENT. A species of mixed action which lies to recover the possession of lands, with damages and costs for the wrongful withholding of them; being the

principal method in modern use, for trying titles to land, and especially distinguished from other actions by the series of legal fictions on which it is founded. Ejectment is nothing more than the old personal action of *ejection of farm*, (*ejectione firmæ*), which lay to recover a term for years, adapted to the purpose of trying titles to the freehold; and the fictions which distinguish it are merely the essential features of the old action, (viz. a *lease*, an *entry*, and an *ouster*;) retained in form, though long dispensed with in fact. It is still nominally an action to recover a *term for years*, but as, in order to do this, the lessor's title must first be made out, a recovery always necessarily involves the establishment of the title, and thus effectually, although collaterally and incidentally, accomplishes the object of the suit.* The peculiarities of this action are fully explained in the elementary books, to which it will suffice to refer. 3 *Bl. Com.* 199—205. 3 *Steph. Com.* 669—676. *Id.* 490. 2 *Crabb's Real Prop.* 1079, § 2477, *et seq.* *Wharton's Lex.* *Crabb's Hist.* 418, 448, 556. The fictions of ejectment have been made the subject of much criticism, but they have effectually survived the late sweeping changes in the remedial law of England, and are still retained in practice in some of the United States. 4 *Kent's Com.* 70, 71, note.

Ejectment has been described above as a *mixed* action. This is according to the arrangement of Blackstone, and it is expressly so denominated in England, by the stat. 3 & 4 Will. IV. c. 27. 3 *Bl. Com.* 199. 3 *Steph. Com.* 460, note (g). It is, however, classed by Mr. Crabb with *real* actions, and this is the arrangement of the New-York Revised Statutes. 2 *Crabb's Real Prop.* 1079. 2 *N. Y. Rev. St.* [302], 229. On the other hand, Mr. Stephen prefers to consider it as a *personal* action, which it originally was. 3 *Steph. Com.* 460, note (g).

EJECTMENT, (EGETEMENT) DE GARDE. L. Fr. Ejectment of ward. See *Ejectione custodias*. Lord Hale calls it ejectment of *gard*. *Anal.* sect. xxxiv.

EJECTUM. L. Lat. [from *ejicere*, to throw out, or up.] In civil and old English law. That which is thrown out of, or up by the sea, (*quod è mari ejicitur; ejectus maris*); jet; jetsom; wreck. *Cart. Hen. III.* A. D. 1226, given at length in 1 *Peters' Adm. Decisions*, Appendix, xliii.

That which is thrown out of a vessel into the sea, in order to escape shipwreck; or out of a house, to escape destruction by fire. *Calv. Lex. Jur.*

EJICERE. Lat. [from *e*, out, and *jacere*, to throw.] To throw or cast out; to eject or dispossess. *Bract.* 165, 166. *Dejicere*, (q. v.) was more commonly used in the civil law. Calvin, quoting Spicgelius, makes a distinction between these terms; *ejicere* signifying to keep out one who has not yet entered, *dejicere*, to eject one who has already entered. *Calv. Lex.*

EJURARE. Lat. [from *e*, from, and *jurare*, to swear.] In feudal law. To abjure, renounce or disclaim by oath. *Feud. Lib.* 2, tit. 34.

Ejus est velle, qui potest velle. He who can will, [exercise volition] has a right to refuse to will [to withhold consent]. *Dig.* 50. 7. 3.

Ejus nulla culpa est, cui parere necesse est. No guilt attaches to him who is compelled to obey. *Dig.* 50. 17. 169, pr. Obedience to existing laws is a sufficient extenuation of guilt before a civil tribunal. *Broom's Max.* [9].

EJUSDEM GENERIS. Lat. Of the same kind or nature. 1 *Powell on Devises*, 509, note. 1 *Atk.* 462. *Sugden's Law of Prop.* 220, 222.

ΕΚ ΠΑΡΤΙΟΥ, Εκ πλαγίου. Gr. In the civil law. Across; obliquely; transversely. A term descriptive of collateral relatives. *Nov.* 22, c. 23.

ΕΚΠΟΙΕΙΝ, Εκποιεῖν. Gr. [from *ex*, from, and *ποιεῖν*, to make.] In the civil law. To alienate; to transfer; "to make over." *Nov.* 7, c. 1.

ΕΚΠΟΙΗΣΙΣ, Εκποιήσις. Gr. [from *εκποιεῖν*, q. v.] In the civil law. Alienation; transfer; a "making over." *Nov.* 46, in tit.

ELABORARE. L. Lat. [from *labor*.] In old European law. To gain, acquire, or purchase, as by labor and industry.

Elaboratus; property acquired by labor. *Spelman*.

ELARGARE. L. Lat. [from *e*, and *largus*, large.] In old English law. To enlarge; to widen. *Fleta*, lib. 1, c. 24, §§ 8, 10.

ELARGATIO. L. Lat. [from *elargare*, to enlarge.] In old English law. An enlargement. *Reg. Orig.* 250 b, 255. *Elargatio mansi vel curiæ*; the enlargement of a manse, or manor, or court, by taking in more land. *Id. ibid.*

ELECTIO. Lat. [from *eligere*, to

choose.] In old English law. Election; choice. *Electio est interna, libera et spontanea separatio unius rei ab alia, sine compulsionem, consistens in animo et voluntate*; election is the internal, free and voluntary separation of one thing from another, without compulsion, consisting in intention and will. *Dyer*, 281. *Electio fori*; choice of a court. *Cas. temp. Hardw.* 214.

Electio semel facta non patitur regressum. Election once made does not admit of going back, (or recall). *Co. Litt.* 146.

Electiones fiant rite et libere sine interruptione aliqua. Elections should be made in due form and freely, without any interruption. 2 *Inst.* 169.

ELECTION. [L. Fr. *election*; Lat. *electio*, from *eligere*, to choose.] Choice; election; selection. Election is where a man is left to his own free will, to take or do one thing or another, which he pleases. *Co. Litt.* 144 b. *Termes de la Ley. Bract.* fol. 113, 114. 6 *Cruise's Dig.* 18. 2 *Co.* 35, et seq. 5 *Co.* 59. "Election is to choose one or the other, and not every one of them successively." Wythers, J. 2 *Show.* 442. For the doctrine of election in equity, see 1 *White's Equity Cases*, 223, 225—250, and Am. Editor's note. 2 *Story's Eq. Jur.* § 1075, et seq.

ELECTUS, pl. *Electi*. [from *eligere*, to choose.] Chosen. 10 *Mod.* 101, 2. 11 *Id.* 174. *Electi, triati et jurati*; chosen, tried and sworn. *Cro. Jac.* 119.

ELEEMOSYNA. Lat. [from Gr. *ἐλεος*; Fr. *almoigne*.] In old English law. Alms. *Cowell. In liberam eleemosynam*; in free alms; in frank almoign. *Bract.* fol. 27 b. See *Frankalmoign*.

ELEEMOSYNARIA. L. Lat. [from *eleemosyna*, q. v.] The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor. In old English, the *aumerie*, *aumbry*, or *ambry*; words still used in common speech in the North of England, to denote a pantry or cupboard. *Cowell*.

The office of almoner. *Cowell*.

ELEEMOSYNARIUS, Eleemosinarius. L. Lat. [from *eleemosyna*, q. v.] In old English law. An almoner, or distributor of alms. An officer in religious houses, who received the eleemosynary rents and gifts, and in due method distributed them to pious and charitable uses. *Cowell*.

An officer in the king's house, called the

king's almoner, or almner. *Co. Litt.* 94 a. *Fleta*, lib. 2, c. 23. See *Cro. Jac.* 48.

ELEEMOSYNARY. Relating to the distribution of alms, bounty or charity; charitable.

ELEEMOSYNARY CORPORATIONS. Lay corporations, or private charities, constituted for the perpetual distribution of the alms and bounty of the founder of them, to such persons as he has directed. They include hospitals for the relief of the poor, sick and impotent, and colleges and academies established for the promotion of learning and piety. 1 *Bl. Com.* 471. 3 *Steph. Com.* 171. 2 *Kent's Com.* 274.

ELEF, Elefe. L. Fr. Flux and reflux. *Kelham*.

ELEGANTER. Lat. In the civil law. Accurately; with discrimination. *Ware*, J. 3 *Story's R.* 611, 636.

ELEGIT. Lat. [from *eligere*, to choose.] (He has chosen.) In practice. A writ of execution given by the statute of Westminster 2, (13 Edw. I.) c. 18, on judgments for debt or damages, or upon recognizance, and commanding the sheriff to deliver to the plaintiff all the defendant's goods and chattels, (beasts of the plough excepted,) and if these were not sufficient, a moiety of the defendant's lands, to hold until out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired; and during such term or period the plaintiff is called *tenant by elegit*, and the estate created by such tenancy is termed an *estate by elegit*. *Reg. Orig.* 299, 301. *Reg. Jud.* 2. *Co. Litt.* 289 b. 3 *Bl. Com.* 418. 2 *Id.* 161. 1 *Steph. Com.* 287. The statute gave the plaintiff his *election* to have either a *fiery facias* or this writ, and when the plaintiff prayed this writ, the entry on the roll was, *quod elegit sibi executionem fieri de omnibus catallis et medietate terrarum*, (that he hath elected to have execution of all the chattels and half of the land [of the defendant,]) and the writ itself had a similar recital, *quia elegit sibi liberari omnia bona*, &c. Hence the name of *elegit*. *Reg. Orig.* and *Reg. Jud. ub. sup.*

This writ is still in use in some of the United States, as Virginia, Kentucky and Alabama. 4 *Kent's Com.* 431, 436, and notes. 10 *Grattan's R.* 580. In England, a material alteration has been made in its form by the stat. 1 & 2 Vict. c. 110, s. 11, which provides that, upon an *elegit*,

the sheriff shall deliver the *whole* of the defendant's lands, instead of a moiety as before. 1 *Steph. Com.* 278, 288. 3 *Id.* 652. *Sewell's Sheriff*, 204. 2 *Crabb's Real Prop.* 924, § 2288. 15 *Mees. & W.* 764.

ELIDERE. In civil and old English law. To defeat an adversary's pleading. *Bract.* fol. 399 b. To destroy. *Fleta*, lib. 2, c. 60, § 3. Literally, to crush or strangle.

ELIGERE. Lat. [L. Fr. *eslier*.] To choose.

ELISIO. Lat. [from *elidere*, q. v.] A defeating or destroying.

ELISORS, Elisors. [from Fr. *eslier*, to choose.] In practice. Electors or choosers. Persons appointed by the court to execute writs of *venire*, in cases where both the sheriff and coroner are disqualified from acting, and whose duty is to *choose*, that is, name and return the jury. 3 *Bl. Com.* 355. *Co. Litt.* 158. 3 *Steph. Com.* 597, note.

Persons appointed to execute *any* writ, in default of the sheriff and coroner, are also called *elisors*. 3 *Cowen's R.* 298.

ELL. [Lat. *ulna*; Sc. *elne*.] A measure of length, answering to the modern yard. 1 *Bl. Com.* 275.

ELOGIUM. Lat. In the civil law. A will or testament. *Cod.* 6. 23. 29, 30. *Id.* 6. 51. 2.

ELOIGN, Eloin, Elloine, Esloin. [L. Fr. *eloigner*, *esloiner*; L. Lat. *elongare*.] In practice. To remove, or send a great way off, (*longum iter*).* *F. N. B.* 68, 69, 74. 3 *Bl. Com.* 148. Applied to persons, by stat. 13 Edw. I. c. 15, but generally to chattels. See *infra*. Mr. Bentham has observed that this word and its derivative *eloignment*, (q. v.) are wanted in current or ordinary language. 3 *Jud. Evid.* 166, note.

ELOIGNER, Alloigner. L. Fr. To eloin; to remove or carry to a distance. *Eloigne*; *eloigned*. *Yearb. M.* 8 Edw. III. 39. See *Eloign, Alloigner*.

To take one's self away; to go away; to elope, as a wife from her husband. *Yearb. T.* 3 Edw. III. 9. *T.* 6 Edw. III. 1.

ELOIGNMENT. [from *eloign*, q. v.] The getting a thing or person out of the way; or removing it to a distance, so as to be out of reach.

ELONGARE. L. Lat. In old practice. To remove to a distance, (*longum iter*); to carry off or away; to eloin, (q. v.) *Fleta*, lib. 2, c. 45, § 3.

To drive away; to eject or expel. *Artic. Mag. Cart. Johan.* c. 44.

ELONGATA. L. Lat. [from *elongare*, q. v.] In practice. *Eloigned*; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been *eloigned*, that is, carried to a distance, to places to him unknown. 3 *Bl. Com.* 148. 3 *Steph. Com.* 522. *F. N. B.* 73, 74. *Archb. N. Pract.* 552.

ELONGATUS. L. Lat. [L. Fr. *eloigne*.] *Eloigned*. A return made by a sheriff to a writ *de homine replegiando*, stating that the party to be replevied has been *eloigned*, or conveyed out of his jurisdiction. 3 *Bl. Com.* 129.

ELOPEMENT. [from Belg. *ee*, marriage, and *loopen*, to run. *Blount*.] The voluntary departure of a wife from her husband, to live with an adulterer. *Cowell. Tomlins. Wharton.* This occasioned a forfeiture of dower, according to the lines,

Sponte virum mulier fugiens, et adultera facta,
Dote sua caret, nisi sponsi sponte retracta.

Blount expresses his persuasion that this word is taken from the Saxon *geleoran*, to depart from one place to dwell in another, the Saxon *r* being easily mistaken for a *p*. But see *Leipa*.

* * In *Hatchett v. Baddeley*, (2 *W. Bl.* 1080,) De Grey, C. J. observed, "The word *elopement* is not a legal term, nor has it any express meaning in the law. It is not to be found in Bracton, Britton or Fleta, nor is it used in the statute of Westm. 2. The Mirror, indeed, has the word *elopa*, but in a different sense; and none of the dictionaries or etymologists explain the word except Blount and Jacob. Lord Coke is the first that I remember to have mentioned it, and he speaks (2 *Inst.* 435,) of a wife's eloping *and* remaining with an adulterer. The modern books never speak of elopement, but in a criminal view." Both the words *elope* and *elopement* occur in the *Year Book*, M. 1 Hen. VI. pl. 8.

"ELSEWHERE." In another place; in any other place. See 1 *Vern.* 4, and note.

ELUVIONES. L. Lat. In old pleading. Spring tides. *Towns. Pl.* 197.

EMANARE. L. Lat. In old practice. To issue or award. *Emanare brevia*; to award writs. *Towns. Pl.* 28. *Quia erroneè emanavit*; because it issued erroneously. *Felv.* 83.

EMANCIPATION. [Lat. *emancipatio*, from *mancipare* or *mancipare*, to sell.] In the Roman law. A setting free. The enfranchisement of a son by his father, which was anciently done by the formality of an imaginary sale. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate. *Inst.* 1. 12. 6.

In Louisiana, the emancipation of minors is expressly recognised and regulated by law. *Civil Code of Louis.* art. 367, *et seq.*

In England, the term *emancipation* has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 *Ad. & Ell. N. S.* 574, note. In the United States, it is used to signify the liberation of African slaves. See *United States Digest*, Slaves.

EMBARGO. [from Span. *embargar*, *embaragar*, to detain.] A detention of a vessel in port.*—A stopping of ports. 2 *How. St. Trials*, 402.—A prohibition to sail. Johnson, J. 2 *Wheaton's R.* 148.—A restraint or prohibition imposed by the public authorities of a country, on merchant vessels, or other ships, to prevent their leaving its ports, and sometimes amounting, (as the United States embargo act of December 22, 1807,) to an entire interdiction of commercial intercourse. *Jacobsen's Sea Laws*, 382. 1 *Kent's Com.* 60, 432. See *United States Digest*, Embargo and Non-intercourse. Embargoes are peculiar to a state of war, either actual or apprehended. They are imposed, in England, by the mere proclamation of the sovereign, without the intervention of parliament. 1 *Bl. Com.* 270, 271. The word is written by Cowell and Blount, *Imbargo*.

EMBEZZLEMENT. In criminal law. The fraudulent appropriation to one's own use or benefit, of property or money entrusted to him by another; such as the embezzlement by clerks, servants and agents, of their employer's money, or property; the embezzlement by mariners of goods on board a vessel; and the embezzlement, by public officers, of the public money. 4 *Bl. Com.* 230, 231. 4 *Steph. Com.* 168, 169, 219. 3 *Kent's Com.* 194. *Lewis' U. S. Crim. Law*, 237. *Wharton's Am. Crim. Law*, 421. Embezzlement is distinguished from larceny, properly so called, as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner. 4 *Steph. Com.* 168.

The secretion of property by a bankrupt, with intent to defraud his creditors. *Steph. Crim. Law*, 91, 92.

Embezzle is written by Cowell, *Imbezzle*, and *Imbesil*.

EMBLEMETS. [from Fr. *embler*, to sow, or *bled*, *ble*, grain; *emblavance de bled*, corn sprung up above ground.] The profits of sown land; the profits of the crop; growing crops of corn or grain. 2 *Bl. Com.* 122, 145. 1 *Steph. Com.* 242, 269. 2 *Crabb's Real Prop.* 77, § 1046.

Any annual profit of land, produced by expense and labor, as distinguished from the permanent and natural profit of the earth. 2 *Bl. Com.* 122, 403. *Co. Litt.* 55, 56. 4 *Kent's Com.* 73, 109, 110.—The growing crops of those vegetable productions of the soil, which are annually produced by the labor of the cultivator. 2 *Steph. Com.* 257. 2 *Crabb's Real Prop.* 77, 78, §§ 1046—1048. *Id.* 355, § 1469. *Archbold's Landl. & Tenant*, 337. *Lowlass on Wills*, 58, 59. *Bisset on Estates*, 276. *Sewell's Sheriff*, 235. *Grady on Fixtures*, 172.

EMBLER. L. Fr. To sow. *Si le lessee emble la terre*; if the lessee sow the land. *Litt. sect.* 68.

To steal. *Emble*; stolen. *LL. Gul. Cong.* l. 44. *Emble ou robbes*; stolen or robbed. *Britt. c.* 4. *Si le cheval fuit emble hors de sa garde*; if the horse was stolen out of his custody. *Id. c.* 24. *Emblers des gentz*; stealings from the people. *Rot. Parl.* 21 Edw. III. m. 62.

EMBRACEOR. [L. Fr. *embrasour*; L. Lat. *imbraciator*.] In criminal law. One who practices or is guilty of embracery. One who labors a jury, or instructs them, or puts them in fear. *Co. Litt.* 369 a. Defined by statute 19 Hen. VII. c. 13, to be one who, when a matter is on trial between party and party, comes to the bar with one of the parties, (having received some reward so to do,) and speaks in the case, or privily labors the jury, or stands there to survey or overlook them, thereby to put them in fear or doubt of the matter. *Termes de la Ley.* See *Embracery*.

EMBRACERY. In criminal law. The offence of attempting to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like. 1 *Hawk. P. C.* 259. 4 *Chitty's Bl. Com.* 140, and note. 4 *Steph. Com.* 253. Punished in England by fine

and imprisonment. *Id. ibid.* See *Lewis' U. S. Crim. Law*, 241.

EMENDA, Emenda. L. Lat. [from Fr. *amende, emende.*] Amends; that which is given in reparation or satisfaction for a loss, or trespass committed; (*quod in restitutionem damni tribuitur*). *Spelman. Emenda pro transgressionem. Bract. fol. 230.* See *Fleta*, lib. 2, c. 47, § 13. *Mag. Chart. c. 4.*

In Saxon law. A pecuniary compensation for an injury or crime. *Spelman.*

EMENDALS. [L. Lat. *emenda.*] An old word, still used in the accounts of the society of the Inner Temple, where so much in *emendals*, at the foot of an account, signifies so much in bank in the stock of the house, for the supply of all emergent occasions. *Cowell.*

EMENDARE. L. Lat. In Saxon law. To make amends or satisfaction for any crime or trespass committed; (*emendam solvere*;) to pay a fine; to be fined. *LL. Edw. Conf. c. 35. Spelman. Emendare se*; to redeem, or ransom one's life, by payment of a weregild. *LL. Longob. cited ibid.*

To amend or correct. See *Emendatio.*

To repair. *Reg. Orig. 44 b.*

EMENDATIO. Lat. [from *emendare*, q. v.] In old English law. Amendment, or correction. The power of amending and correcting abuses, according to certain rules and measures. *Cowell.*

In Saxon law. A pecuniary satisfaction for an injury; the same as *emenda*, (q. v.) *Spelman.*

EMENDATIO PANIS ET CEREVISIÆ. L. Lat. In old English law. The assizing of bread and beer, or the power of supervising and correcting the weights and measures of them. *Kennett's Par. Ant. 196. Cowell.*

EMERCIABLE. L. Fr. Liable to amercement; amerciable. *Britt. c. 21.*

EMERGE. [from Lat. *emergere*, q. v.] To arise; to come to light. "Unless a matter happen to emerge after issue joined." *Hale's Anal. sect. 1.*

EMERGERE. Lat. In old English law. To emerge; to arise; to happen. *Bract. fol. 1 b, 109. Stat. Marlbr. c. 13. Novis injuriis emersis, nova constituuntur remedia*; as new injuries arise, new remedies are ordained. *Fleta*, lib. 2, c. 2, § 1. *Remoto impedimento emergit actio.* The impediment removed, the action rises, (becomes available or efficacious). *Shep. Touch. (by Preston), 150.*

EMI, Emmi. L. Fr. In half; in the middle. *Kelham.*

EMINENT DOMAIN. [Lat. *dominium eminens.*] The inherent sovereign power of a state, which gives to the legislature the control of private property for public uses. 2 *Kent's Com.* 389, and note.—The ultimate right of the sovereign power to appropriate not only the public property but the private property of all the citizens within the territorial sovereignty, to public purposes. *Story, J. 11 Peters' R. 420, 641. Webster, arg. S. C. Wood, C. J. 14 Ohio R. 147, 173. See 6 Howard's R. 531. 4 Ohio St. R. 308. 5 Id. 374. Id. 140, 148. 29 Mississippi R. 21, 32. 25 Vermont R. 465. 1 Selden's R. 434.*

The original and ultimate property claimed by the people of a state, in and to all lands within the jurisdiction of the state.* 1 *N. Y. Rev. Stat. [718,] 714, § 1. 3 Kent's Com. 513. 4 Id. 3.*

EMIT. [from Lat. *emittere*, from *e*, out, and *mittere*, to send.] To send out or send forth; to put out; to issue, as paper money for the purpose of circulation.

In Scotch practice. To speak out; to state in words. A prisoner is said to emit a declaration. 3 *Alison's Crim. Pr.* 560.

EMNE CHRISTEN. Sax. Brother in Christ. *Spelman.*

EMPALER. L. Fr. To fence in. *Empalement*; a fencing in. *Keilw. 30, pl. 2.*

EMPANEL. The old form of writing *Impanel*, (q. v.) *Cowell. Blount.*

EMPARKER. L. Fr. [from *en*, in, and *parke*, a pound; L. Lat. *imparcare.*] To impound. *Britt. c. 21, 51.*

EMPARL. [from Fr. *enparler, emparler*, to speak together.] The old form of *imparl*, (q. v.) as *emparlance* was of *imparlance*, (q. v.) *Cowell. Blount. Finch's Law, b. 4, ch. 42.* The ancient orthography is, in strictness, correct. See *E, Enparler.*

EMPARLER. L. Fr. To emparl or imparl. *Isaer d'emparler*; to go out to imparl. *Yearb. P. 5 Edw. III. 18.*

EMPARNOURS. L. Fr. Undertakers of suits. *Kelham.*

EMPEROR. [from Lat. *imperator*, q. v.] The title of the sovereign or supreme monarch of an empire. Frequently considered as of superior dignity to that of king, although Blackstone treats this as "a ridiculous notion." See 1 *Bl. Com.* 242.

EMPESCHER. L. Fr. To impeach. *L. Fr. Dict. See Impeach.*

EMPESCHEMENT. L. Fr. Impeachment. *Kelham*.

EMPHYTEUSIS, *Emphyteosis, Emphyteosis.* Græco-Lat. [from Gr. *ἐμφυτεύω*, from *ἐμφύεω*, to plant, or improve land.] In the civil law. An improving lease; a contract (of the class termed consensual,) by which houses or lands are given to be possessed for ever, (*perpetuo fructu traduntur*,) or, at least, for a long time, upon condition that the land shall be improved, and that a small yearly rent or pension, (*pensio sive redditus*,) shall be paid to the proprietor. *Inst.* 3. 25. 3. *Cooper's Notes*, in *loc. Hallifax, Anal.* b. 2, ch 18, num. 9. See *Cod.* 4. 66. It is distinguished both from the contract of sale, and the contract of hiring, and rests on its own peculiar covenants. *Inst. ub. sup. Calv. Lex.* It resembles the fee farm and copyhold estates of the English law. See *Emphyteuta*.

The right granted by such a contract, (*jus emphyteuticum*, or *emphyteuticarium*). The real right by which a person is entitled to enjoy another's estate as if it were his own, and to dispose of its substance, as far as can be done without deteriorating it. 1 *Mackeld. Civ. Law*, 357, § 324.—An inheritable and transferable real right, which is granted by the proprietor of an estate to another, in consideration of a certain and invariable rent to be paid at the time agreed upon. *Id.* 359, Kaufmann's note.

The thing or estate itself, (*bonum seu prædium emphyteuticarium*,) in which such a right is given. *Id.* 356, note.

EMPHYTEUTA. Græco-Lat. [from *emphyteusis*, q. v.] In the civil law. The person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis*. *Calv. Lex.* 1 *Mackeld. Civ. Law*, 357, § 324, 325.

EMPHYTEUTICUS. Græco-Lat. [from Gr. *ἐμφυτεύτικός*.] In the civil law. Founded on, growing out of, or having the character of an *emphyteusis*; held under an *emphyteusis*. 3 *Bl. Com.* 232. *Calv. Lex.*

EMPIRE, *Empire.* L. Fr. To make worse. *Britt.* c. 54.

EMPLEAD. The old (and strictly, the correct) form of *Implead*, (q. v.) from the Fr. *emplader*, (q. v.) Otherwise written *Empleet*. *Cowell*.

EMPLEDER, *Enpleder.* L. Fr. To implead. *Ne pleder ne estre emplede*; neither to plead, nor to be impleaded. *Britt.* c. 33. See *Id.* c. 11. *Ne emple-*

deront ne serront empledes; shall neither implead nor be impleaded. *Litt.* sect. 76.

EMPLER, *Emplir.* L. Fr. To fulfil. *Kelham*.

EMPORTER. L. Fr. To carry away. *Yearb.* 8 Edw. III. 2.

EMPRESTITO. Span. In Spanish law. Loan; a thing lent at the request of the borrower. *White's New Recop.* b. 2, tit. 11, c. 1.

EMPRES, *Empres.* L. Fr. After; afterwards. *Kelham*.

EMPRIMECHIEF. L. Fr. First of all. *Kelham*.

EMPRIS. L. Fr. Undertaken. *Kelham*.

EMPRISONER, *Enprisoner.* L. Fr. To imprison. *Britt.* c. 66.

EMPRISONEMENT. L. Fr. Imprisonment. *Emprisonement pur emprisonement*; imprisonment for imprisonment. *Britt.* c. 25.

EMPROMPTER, *Enprompter.* L. Fr. To borrow. *Emprompt*; borrowed; borrowing. *Britt.* c. 21.

EMPTI ACTIO. See *Actio ex empto*.

EMPTIO, *Emtio.* Lat. [from *emere*, to buy.] A buying or purchase. *Calv. Lex.* *Bract.* fol. 61 b. See *Emtio*.

EMPTIO ET VENDITIO. Lat. Purchase and sale; sometimes translated *emption and vendition*. The name of the contract of sale in the Roman law. *Inst.* 3. 24. *Cod.* 4. 38. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24. Sometimes made a compound word,—*emptio-venditio*. *Hallifax, Anal.* b. 2, ch. 18.—A consensual contract to deliver a thing for a certain price. *Heinecc. ub. sup.*—An agreement for the seller to part with a thing for money given to him by the buyer. 3 *Salk.* 61.

EMPTOR. Lat. [from *emere*, to buy.] In old English law. A purveyor. *Fleta*, lib. 2, c. 17.

EMPTOR. Lat. [from *emere*, to buy.] A buyer or purchaser. *Emptor tenetur venditori ad pretium, et venditor emptori, è converso, ad ipsam rem tradendam*; the buyer is bound to the seller for the price, and the seller, *è converso*, to the buyer, to deliver the thing sold. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 1. See *Emtor*.

Emptor emit quam minimo potest, venditor vendit quam maximo potest. The buyer purchases for the lowest price he can, the seller sells for the highest price he can. 3 *Kent's Com.* 486. The law does not interfere with the right of each party to make

the best bargain for himself, where no imposition is practiced. *Id. ibid.* The same maxim is cited to show that a person cannot act as agent for another to sell property, and become himself the purchaser. 4 *Kent's Com.* 438.

CAVEAT EMPTOR. (q. v.) Let the purchaser take care.

EMTIO. Lat. In the civil law. Purchase. This form of the word is used in the Digests and Code. *Dig.* 18. 1. *Cod.* 4. 49.

EMTOR. Lat. In the civil law. A buyer or purchaser; the buyer. *Dig.* 18. 1. *Cod.* 4. 49.

EMTRIX. Lat. In the civil law. A female purchaser; the purchaser. *Cod.* 4. 54. 1.

EN. L. Fr. [Lat. *in.*] In. *En quel counte, ou en quel maner, ou en quel fee, ou en quel baronie*; in what county, or in what manor, or in what fee, or in what barony. *Britt.* c. 51.

Into. *Le tenement soit turne en l'estate que il fuit avaunt*; the tenement shall be turned into the estate which it was before. *Id.* c. 50. *Turne en trespas.* *Id. ibid.*

EN APRES. L. Fr. Hereafter; afterwards. *L. Fr. Dict.*

EN ARERE. L. Fr. In time past. *Stat. de Judaismo.* 2 *Inst.* 506.

EN AUTRE (AUTER) DROIT. L. Fr. In another's right. 2 *Bl. Com.* 177.

EN AVANT. L. Fr. In future; for the time to come. *Kelham.*

EN BANKE. L. Fr. In the bench. 1 *And.* 51.

EN BARRE. L. Fr. In bar. *Yearb.* T. 8 *Edw.* III. 6.

EN BONNE FOY. L. Fr. In good faith. *Yearb.* T. 4 *Edw.* II. 107.

EN CERTAIN. L. Fr. In certain. *Mys en certain*; put in certain; reduced to certainty. *Britt.* c. 69.

EN CHIEFE. L. Fr. [L. Lat. *in capite.*] In chief. *Que tenent en chiefe*; who hold in chief, or *in capite.* *Britt.* c. 34.

EN COSTE. L. Fr. On the side; collateral. *Kelham.* See *Coste.*

EN COURT. L. Fr. In, or into court. *Viendra en court*; shall come into court. *Britt.* c. 26.

EN DEMEURE. Fr. [Lat. *in mora.*] In delay; chargeable with delay; guilty of improper delay; in default. *Poth. Obl.* part 1, ch. 4, sect. 4, § 3.

EN DEMEYNE. L. Fr. In demesne. *En demeyne et en severalte.* *Britt.* c. 42.

EN FET. L. Fr. In fact. *Yearb.* M. 3 *Edw.* II. 59.

EN GROS. L. Fr. In gross; by wholesale. *Britt.* c. 21.

EN JUGEMENT. L. Fr. In judgment; in or into court, (*in judicio*, q. v.) *Co'e les p'ties viendr' en jugement*; when the parties shall appear in court. *Britt.* c. 24.

EN JUICIO. Span. Judicially; in a court of law; in a suit at law. *White's New Recop.* b. 2, tit. 8, c. 1.

EN LE (LA) MERCIE. L. Fr. [L. Lat. *in misericordia.*] In mercy. *Britt.* c. 24. *Litt.* sect. 514.

EN LE PER. L. Fr. In the *per.* *En le per et cui*; in the *per* and *cui.* *En le post*; in the *post.* Terms applied, in the old books, to writs of entry. *Reg. Orig.* 228, 229. 3 *Reeves' Hist.* 34. See *In the per*, &c.

EN MORT MEYNE. L. Fr. [L. Lat. *in mortua manu.*] In a dead hand; in mortmain. *Britt.* c. 43.

EN OULTRE. L. Fr. Furthermore. *Kelham.*

EN OWEL MAIN. L. Fr. In equal hand. *Yearb.* M. 5 *Edw.* III. 106. See *In equali manu.*

EN PAIS. *En pays.* L. Fr. [L. Lat. *in patria.*] In the country. *Litt.* sect. 618. See *In pais.*

On the country. *Se soient mys en pays*; put themselves on the country. *Britt.* c. 4.

EN PAATEI. Gr. Broadly; liberally; with an allowance. *Dig.* 46. 3. 13. *Id.* 46. 8. 12. 2.

EN PLEIN CONTE. L. Fr. In full country court. *Artic. sup. Chart.*

EN PLEIN (or PLEYN) VIE. L. Fr. In full life. *Britt.* c. 106.

EN POIGNE. *En poin.* L. Fr. In hand. *Quant le feoffor ad le fait en poigne*; when the feoffor hath the deed in hand. *Litt.* sect. 375.

EN PRIMES. L. Fr. [Lat. *imprimis.*] In the first place; first. *Britt.* fol. 1. *Id.* c. 26. This phrase constantly occurs in the old French statutes. *Stat. Westm.* 1, c. 1. *Artic. sup. Chart.*

EN SON DAMAGE. L. Fr. [L. Lat. *in damno suo.*] In his damage; doing him damage; damage feasant, (q. v.) *En son pree, ou en ses blees, ou aillours en son damage*; in his meadow, or in his corn, or elsewhere in his damage. *Britt.* c. 27.

EN SON DEMEYNE COME DE FEE.

L. Fr. In his demesne as of fee. *Britt.* c. 51, 72. See *Demesne*.

EN SUSPENCE. L. Fr. In abeyance. *Dyer*, 71, (Fr. ed.)

EN TESMOIGNANCE. L. Fr. [Lat. in testimonium.] In testimony or witness. *En tesmoignances des queux choses nous avons fait faire cestes nous lettres overts*; in testimony whereof we have caused these our letters to be made patent (open). *Stat. Confirm. Chartarum*, c. 7. *En testimoignance de quele chose, &c.* *Stat. of Tithes*. 2 *Inst.* 639.

EN VENTRE SA MERE. L. Fr. In its mother's womb. *Britt.* c. 118.

EN VIE. L. Fr. In life; alive. *Britt.* c. 50.

ENABLING STATUTE. In English law. The statute 32 Hen. VIII. c. 28, by which tenants in tail, husbands seised in right of their wives, and persons seised of an estate of fee simple in right of their churches, were empowered or *enabled* to make leases to endure for their lives, or twenty-one years, which could not do so before. 2 *Bl. Com.* 319. *Co. Litt.* 44 a. 3 *Steph. Com.* 139.

ENACT. To put into the form of an act;* to make, as a law; to pass, as a bill, into a law; to give legislative sanction to a bill. *Webster*.

ENBEVERER. L. Fr. To water, (as cattle). *Britt.* c. 61.

ENBLER. L. Fr. To sow. *Enblee, enblaye*; sown.

ENBOSOGNEZ. L. Fr. Engaged in business. *Kelham*.

ENBREVER. L. Fr. To write down in short; to abbreviate, or, in old language, *imbreviare*; to put into a schedule. *Britt.* c. 1. See *Imbreviare*.

ENCAUSTUM. Lat. In the civil law. A kind of ink or writing fluid appropriated to the use of the emperor. *Cod.* 1. 23. 6. See *Incaustum*.

ENCAVER. L. Fr. To beware. *Kelham*.

ENCEA, *Enci*. L. Fr. So; also; afterwards. *Kelham*.

ENCEINT, *Enceynt, Ensient*. L. Fr. Pregnant; with child. *Enceynte de enfant*. *Britt.* c. 24.

ENCEPPER. L. Fr. To confine; to put into the stocks. (?) *Britt.* c. 49.

ENCHASER. L. Fr. To chase or hunt; to drive; to compel. *L. Fr. Dict.* *Kelham*.

ENCHAZ ET RECHAZ. L. Fr. In-

chase and outchase; the right of driving cattle to and from a common. *Kelham*.

ENCHESON, *Enchesson, Enchason, Enchison, Acheson*. L. Fr. Cause; reason; occasion. *Par quel encheson il se neya*; for what reason he drowned himself. *Britt.* c. 1. *Par encheson de matrimoyne*; in consideration of marriage. *Id.* c. 34. *Sans reasonable encheson*; without reasonable cause. *Stat. Westm.* 1, c. 6.

ENCL. L. Fr. So; also; afterwards. *Kelham*.

ENCLAMER. L. Fr. To claim. *Enclamaunt fraunk tenement*; claiming the freehold. *Britt.* c. 42. *Id.* c. 70.

ENCLOSER. L. Fr. To enclose. *Britt.* c. 61. *Enclos*; enclosed; shut in, or shut up. *Id. ibid.* *Id.* c. 33.

ENCLOSE. In Scotch practice. To shut up a jury, after the case has been submitted to them. 2 *Alison's Crim. Pr.* 634. "*Enclosure of the jury*." *Id.* 635.

ENCOIRES. L. Fr. Besides. *Kelham*.

ENCOMBRER, *Encumbrer*. L. Fr. To encumber or hinder. *Britt.* c. 68. *Encumbrément*; hindrance or encumbrance. *Id.* c. 75.

To possess a church; to be the incumbent. *Id.* c. 92.

ENCOUNTER, *Encontre, Encounter, Encountre*. L. Fr. [Lat. *contra*.] Against; in opposition to; in violation of. *Britt.* fol. 3. *Id.* c. 93, *et passim*. *Conf. Cartar.* 25 Edw. I.

ENCOUPEL. L. Fr. [Lat. *inculpate*.] To accuse or charge. *Encoupe*; accused. *Britt.* c. 4, 110.

ENCOURER. L. Fr. [Lat. *incurrere*.] To run; to run against, or bar. *Car nul temps en ceo cas ne luy encoure*; for no time in this case runs against him. *Britt.* c. 38.

ENCRECER. L. Fr. To accrue; to increase. *Kelham*.

ENCRES. L. Fr. Increase; accretion. *Si l'encres eyt este si subtil, que nul ne poet voier ne aperceyver cel encres que luy eyt estre encru par proces de temps*; if the increase have been so imperceptible that none might see nor perceive such increase which may have accrued by process of time. *Britt.* c. 33.

ENCROACH. [from L. Fr. *encrocher*, q. v.] To gain unlawfully upon the rights or possession of another; to take more than is one's right or due.* "If the tenant holds by fealty and a hawk, and the lord encroaches a horse." *Plowd.* 94 a. "If the

tenant holds by fealty and 2s. rent, and the lord *encroaches* 4s. or if the tenant holds by one horse and the lord *encroaches* two horses." *Id. ibid.* Applied to the taking of fees by the clerks of a court. 1 *Leon.* 5. Cowell derives this word from the Fr. *accrocher*, in which he is followed by Webster. But the L. Fr. *encrocher* (q. v.) was constantly used. Anciently written *In-croch*, (q. v.) See *Accroach*.

ENCROACHMENT. [L. Fr. *encrochement*.] An unlawful gaining upon the rights or possessions of another. *Cowell.*

ENCROCHER. L. Fr. To pull or draw to, as with a hook, (*croc*); to take more than is due.* *Plowd.* 94, 95, (Fr. ed.)

ENCUMBRANCE. [from L. Fr. *encombrer*.] A burden or charge upon property, such as a mortgage. See *Incumbrance*.

ENCURRED. An old form of *In-curred*. 1 *Leon.* 13.

ENCUSER. L. Fr. To accuse. *Encuse*; accused. *Britt.* c. 4, 22.

Encusement; accusation. *Id.* c. 22.

Encusour; an accuser. *Id.* c. 4.

ENCZ. L. Fr. But. *Kelham.*

END. Object; intent. Things are construed according to the end. *Finch's Law*, b. 1, ch. 3, num. 10.

END AND EXPIRATION. Held to be synonymous terms. *Plowd.* 198.

ENDEBTED. An old form of *Indebted*. 3 *Leon.* 205.

ENDENT, Endente. L. Fr. Indented; cut or divided in a line resembling the teeth of a saw. *Issint que l'escript soit endente, et que les justices eyent la une partie, et l'autre partie remeigne as presentours*; so that the writing be indented, and that the justices shall have one part, and the other part shall remain with the presentors. *Britt.* c. 2. *Deyvent estre doubles, trebles et endentes.* *Id.* c. 39. *Per fait endente*; by deed indented. *Litt.* sect. 217. *En faits endentes.* *Id.* sect. 370. See *Indent*.

ENDENTURE. L. Fr. An indenture. *Litt.* sect. 370. See *Indenture*.

ENDICT. The old form of *Indict*. *Keilw.* 25 b.

ENDICTMENT. The old form of *Indictment*. *Keilw.* 25. 3 *Leon.* 140. Used by Cowell.

ENDITE. An old form of *Indict*, (q. v.) Formed directly from the Fr. *enditer*, (q. v.)

ENDITEMENT. An old form of *Indictment*, used by Cowell and Blount; and derived from the Fr. *enditer*, (q. v.)

ENDITER, Endicter. L. Fr. To indict. *Endite, endites*; indicted. *Britt.* c. 1, 15. *Enditees.* *Yearb.* T. 7 Hen. VI. 18.

ENDORCER. L. Fr. To endorse. *Dyer*, 1, (Fr. ed.)

ENDORMIR. L. Fr. To sleep; to be or become dormant. *Endormy*; dormant or suspended. *Britt.* c. 108.

ENDORSE. [from L. Fr. *endorser, endorcer*.] To put on the back, (*en dorse*). To write on the back; to back, (q. v.)

In mercantile law. To write one's name on the back of a bill, note or check. See *Indorse*.

Endorse is still used in preference to *Indorse* by writers of high authority, and is undoubtedly the correct form, if the word is to be considered as directly formed from the French. 3 *Kent's Com.* 88—93. See *E*.

ENDORSEMENT. See *Endorse, Indorsement*.

ENDORSER. See *Endorse, Indorser*.

ENDOSSER. L. Fr. To endorse. *Fet Assaver*, § 28.

ENDOWMENT. L. Fr. and Eng. [L. Lat. *dotatio*.] The assignment or bestowment of dower to, or upon a woman. 2 *Bl. Com.* 135.

The providing for the officiating ministers of a church, by setting apart a certain portion of lands, &c. for their maintenance, &c. *Id.* 21. 1 *Bl. Com.* 387. 3 *Steph. Com.* 111. It has no reference to building or providing a site. 35 *Eng. Law & Eq. R.* 433.

The provision itself, so made; (*dos ecclesiæ*). *Com. Dig.* Dismes, B.

ENEMIABLEMENT. L. Fr. In a hostile manner. *Kelham.*

ENEMY. [Lat. *hostis*.] In the law of nations. A hostile nation; a nation or power at war with another, or against whom a war is declared or carried on; the whole body of a nation at war with another. See 1 *Kent's Com.* 94.

A citizen or subject of a hostile nation. See *Id.*

ENFANT. The old form of *Infant*. 3 *Leon.* 113.

ENFAUNT. L. Fr. [from Lat. *enfants*.] An infant, (child). *Britt.* c. 107.

An infant or minor. *Enfaunt dedens age*; an infant under age. *Britt.* c. 54, 126.

ENFEOFF. [L. Lat. *feoffare, infeudare*, q. v.] To give, bestow or convey a fee or fief. 2 *Bl. Com.* 310. See *Feoffment*.

ENFERGES. L. Fr. Put in iron. *Kelham*.

ENFORM. The old form of *Inform*. 2 *Leon*. 3.

ENFOURNER. L. Fr. To perform. *Enfourny*; performed. *Yearb. M.* 3 Edw. II. 49.

ENFORMER. L. Fr. To inform. *Britt.* c. 84, 96.

ENFRANCHISE. [from L. Fr. *enfraunchir*, q. v.] To make free. See *Enfranchisement*.

To incorporate a person into any body politic or corporation; to make a person a free denizen. *Cowell. Blount. Termes de la Ley*.

ENFRANCHISEMENT. L. Fr. and Eng. [from *enfraunchir*, q. v.] The act of making a person free, as a villein or bondman. *Enfranchisement* is a more general word than manumission, for that is properly applied to a villein. Every manumission is an enfranchisement, but every enfranchisement is not a manumission. *Co. Litt.* 137 b.

The incorporating a person into any society or body politic, and thereby imparting to him its liberties and privileges. *Cowell. Termes de la Ley*. 11 *Co.* 91. The making a man free of a company or corporation. *Co. Litt.* 137 b.

ENFRANCHISEMENT OF COPYHOLDS. In English law. The conversion of copyhold into freehold tenure, by a conveyance of the fee simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, &c., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate. 1 *Watkins on Copyholds*, 362. *Scriven on Copyholds*, 616. 2 *Steph. Com.* 51. 1 *Id.* 208. 1 *Crabb's Real Prop.* 693, 695, §§ 894, 895, 897.

ENFRAUNCHIR, *Enfranchir*. L. Fr. [from *en*, in, and *fraunk*, free.] To make free; to confer a privilege or liberty; to enfranchise, (q. v.) *Enfraunchys par chartres. Britt.* c. 120.

ENFREINDRE, *Enfreinder*. L. Fr. To break; to violate or infringe. *L. Fr. Dict. Enfreint*, broken. *Dyer*, 45, (Fr. ed.) *Nostre peas enfreynt*; our peace broken. *Britt.* c. 29.

ENGAGEMENT. [from L. Fr. *engager*, q. v.] A binding by gage or pledge.

Obligation by agreement or contract. *Webster*.

ENGAGER. L. Fr. To pledge. *Kelham*. See *Gage*.

ENGEINE. L. Fr. Ingenuity; skill to apprehend another's meaning. *Dyer*, 57.

ENGENDRER. L. Fr. To beget, or engender. *Britt.* c. 36.

ENGENDRURE. L. Fr. [from *engendrer*, q. v.] Issue. *Britt.* c. 77.

ENGETTER. L. Fr. To eject; to cast or throw out. *Engette*; ejected. *Britt.* c. 32, 34, 40.

ENGIN, *Enghein*. L. Fr. Ill design; deceit; fraud. *Kelham*. See *Engyn*.

"ENGINE," said to be a word of very general signification; and when used in an act, its meaning must be sought out from the act itself, and the language which surrounds it, and also from other acts in *pari materia*, in which it occurs. *Abbott, J.* 6 *M. & S.* 192. In a large sense, it applies to all utensils and tools which afford the means of carrying on a trade. But in a more limited sense it means a thing of considerable dimensions, of a fixed or permanent nature, analogous to an erection or building. *Id.* 182.

ENGLECCERY, *Englecherie, Englescherie, Engleschery*. L. Fr. and Eng. [L. Lat. *Englescheria, Englecceria, Anglescheria*.] In old English law. The fact of being an Englishman; Englishery; (*Anglietas, nativitas Anglica*). *Spelman, voc. Englecheria. Bract.* fol. 135. *Fleta*, lib. 1, c. 30. 2 *Reeves' Hist.* 22. 4 *Bl. Com.* 195. In Bracton's time it was the law that, where a person was found killed, he was presumed to be a Frenchman, (*Francigena*), unless Engleschery, (that is the fact of his being an Englishman,) was proved by the relations and presented before the justices. *Bract. ub. sup. Britt.* c. 6. This law was introduced first by Canute and afterwards by William the Conqueror, for the greater protection of their respective subjects from assassination; a much heavier fine being imposed upon the vill or hundred, for killing a Dane or Norman, than a native. *Spelman*. It was an object, therefore, to prove Engleschery, which relieved the country from this burden. *Id.* 4 *Bl. Com.* 195. Englishery was abolished by statute 14 Edw. III. c. 4. *Id. ibid.*

ENGLETERRE. L. Fr. England. *Britt.* fol. 1.

ENGLEYS. L. Fr. English; an Englishman. *Britt.* c. 6. *Engloys. Dyer*, 92.

ENGLISHERY. See *Engleccery*.

ENGROSS. [from Fr. *en*, in, and *gross*,

grosse, large.] In practice. To write in a gross, or *large* strong hand. 1 *Bl. Com.* 183.

To copy in a large or fair hand; to copy upon parchment or stamped paper; to copy a paper for the purpose of filing.

In old conveyancing, a fine was said to be *engrossed*, when the chirographer made the indentures of the fine, and delivered them to the party to whom the conveyance was made. 5 *Co.* 39 b.

In criminal law. To buy up any commodity in *large* quantities, so as to obtain the exclusive possession or monopoly of it, with an intent to sell it at an unreasonable price.* 4 *Bl. Com.* 158. See *Engrossing*.

ENGROSSER. [L. Lat. *ingrossator*.] A clerk or copyist.

One who practices, or is guilty of engrossing. See *Engrossing*.

ENGROSSING. In English law. The getting into one's possession, or buying up large quantities of corn, [grain,] or other dead victuals, with intent to sell them again. The total engrossing of any other commodity, with intent to sell it at an unreasonable price. 4 *Bl. Com.* 158, 159. This was, until recently, a misdemeanour, punishable by fine and imprisonment. *Id. ibid.* *Steph. Crim. Law*, 95. Now repealed by 7 & 8 *Vict. c.* 24. 4 *Steph. Com.* 291, note.

ENGYN, *Engin, Ingen, Ingene*. L. Fr. [from Lat. *ingenium*, contrivance.] Fraud; deceit; ill design. *Britt.* c. 4.

ENHABLER. L. Fr. To enable. *Kelham*.

ENHAUNCER. L. Fr. To raise; to lift up; to set up. *Enhaunce*; raised. *Ou enhaunce ou abatu*; raised or lowered. *Britt.* c. 81. Applied to material objects.

ENHERITANCE. L. Fr. and Eng. The old form of *inheritance*, (q. v.) *Cowell*.

ENHERITER. L. Fr. To inherit. *Cestuy que doit enheriter al pere doit enheriter al fitz*. He who should have inherited to the father shall inherit to the son. See *Cestui*.

ENHERITRIX. L. Lat. A female heir. 3 *Leon.* 190.

ENITIA, (ENICIA) PARS. L. Lat. In old English law. The part or share of the eldest. The part which the eldest sister had, where a partition of lands was made by friends chosen by agreement of parceners, and she chose first one of the parts so divided. *Litt. sect.* 244, 245. *Co. Litt.* 166 b. *Stat. Marlbr. c.* 9. *Reg. Orig.* 177. *Enitia pars semper preferenda est propter privilegium ætatis*; the part of

the eldest is always to be preferred on account of the privilege of age. *Co. Litt. ub. sup.* See *Eisnetia, Esnecy*.

ENJOIN. [from L. Fr. *enjoindre*; Lat. *injungere*.] To impose or lay upon; to lay a command upon; to command.

In practice. To command a person to refrain from doing a thing; to prohibit or restrain by express command. See *Injunction*.

ENJOYNDRE. L. Fr. To command; to enjoin. *Et puis lour soit enjoynt que si, &c.*; and afterwards it shall be enjoined upon them, that if, &c. *Britt. c.* 29. See *Id. cc.* 70, 74.

ENKE. L. Fr. Ink. *Diversite de mayn, ou de enke en l'escripture*; difference of hand or of ink in the writing. *Britt. c.* 28.

The English word *ink*, though closely and obviously formed from the French, follows the Latin *incaustum*, in its initial letter. See *E, Incaustum*.

ENLARGE, *Inlarge*. [from L. Fr. *enlarger*, q. v.] In old law. To set at large; to release from custody. *Selden, arg. 3 State Trials*, 109.

ENLARGE. [from L. Fr. *enlarger*, q. v.] In practice. To extend; to add to; to grant further time. To *enlarge* a rule is to extend the time for a party to show cause under it. *Holthouse*.

ENLARGER. L. Fr. To enlarge; to make more comprehensive; to make wider. Applied both to rights and to material objects. *Puit home enlarger le don*; a man may enlarge the gift. *Britt. c.* 39. *Chemyn enlargy*; a way or road enlarged or widened. *Id. c.* 63.

ENLARGER L'ESTATE. L. Fr. In conveyancing. The enlarging of an estate; as where an immediate remainder-man in fee releases all his right to the particular tenant in possession, and his heirs; this gives the latter the estate in fee. 2 *Bl. Com.* 324. *Litt. sect.* 465. 1 *Steph. Com.* 480.

ENLARGING STATUTE. A remedial statute which enlarges or extends the common law. 1 *Bl. Com.* 86, 87.

ENLOST, (*En l'ost*). L. Fr. In the army. *Kelham*.

ENNOYER, *Enoyer*. L. Fr. To annul. *Kelham*.

ENOR. L. Fr. Honor. *Kelham*.

ENORMIS. Lat. [from *e*, out of, and *norma*, rule.] Out of rule or measure; irregular; immoderate; excessive.

Out of rule or law; against law; unlawful; wrongful. See *Enormia*.

Enormous; heinous. *Enormis transgressio*; a heinous trespass. *Stat. Westm.* 2, c. 29.

ENORMIA. L. Lat. [from *enormis*, q. v.] In old practice and pleading. Unlawful or wrongful acts; wrongs. *Et alia enormia*; and other wrongs. This phrase constantly occurs in the old writs of trespass in the Register. *Reg. Orig.* 92 b, 93. It occurs also in the old declarations in trespass, and is literally translated in the modern forms; the original *alia enormia* being still retained as the name of the clause containing it. See *Alia enormia*.

ENORMOUS. [from Lat. *enormis*, q. v.] Aggravated. "So enormous a trespass." *Vaugh.* 115. Written "enormious," in some of the old books. *Enormious* is where a thing is made without a rule or against law. *Brownl.* part 2, 19.

ENOUNDEZ. L. Fr. Overflowed. *Kelham*.

ENPARLER. L. Fr. In old practice. To speak or talk together; to emparl or imparl. Applied by Britton to the deliberation of a jury. *Et tauntost voysent les jurours en une part par euz mesmes, pur enparler*; and presently the jurors shall go to one side [aside] by themselves, to imparl or talk together. *Britt.* c. 52. *Ove v're cong' nous voulons enparler*; with your leave, we will imparl. *Yearb.* P. 7 Hen. VI. 18.

ENPEIRANT. L. Fr. Impairing. *Kelham*. *Enpeirez*; impaired. *Id.*

ENPLEET. An old form of *Implead*.

ENPORTER. L. Fr. To carry away. *Kelham*.

ENPRISONER. L. Fr. To imprison. *Britt.* c. 66. See *Emprisoner*.

ENPROUER, *Enprower*. L. Fr. To improve. *Britt.* c. 67. *Kelham*.

ENQUERER. L. Fr. [from Lat. *inquirere*.] To inquire; to make inquiry. *Britt.* c. 51. *Enquerge*; he shall inquire. *Id.* c. 1.

ENQUEST. L. Fr. and Eng. [Fr. *enquête*; from Fr. *enquerer*, q. v.] Inquisition or inquiry; an inquest; the inquisition of a jury. *Britt.* cc. 1, 33.

A jury. *Yearb.* M. 3 Edw. II. 56. *Litt.* sect. 368.

Enquest was the old English form of *Inquest*, and is used by Cowell. 1 *Leon.* 5.

ENQUORE. L. Fr. Yet; still. *Kelham*.

ENRACER. L. Fr. To pull up by the roots. *Kelham*.

ENROLL [from L. Fr. *enrouler*; L. Lat. *irrotulare*.] In practice. To put in, or on a roll; to write, transcribe or enter

on a roll of parchment, or other material. See *Roll*, *Enrouler*.

To enter on record, as a decree in chancery. 2 *Daniell's Chanc. Pract.* 1220.

To record, as a deed. *Stat.* 27 Hen. VIII. c. 16.

Inroll was an old English form of this word, which is used by Cowell, and adopted by some modern writers.

ENROLLMENT. [from L. Fr. *enroulement*; L. Lat. *irrotulatio*.] An entering on a roll, or on record; the recording of a deed. See *Enroll*. Written by Cowell, *Inrollment*.

ENROULER. L. Fr. [from *en*, in or on, and *roule*, a roll.] To enroll; to put or write on a roll. *Enrouler en roule de coroner*; to enroll on the roll of the coroner. *Britt.* c. 1. *Les nosmes des fuytys soient enroules de deux roubles*; the names of the fugitives shall be enrolled in two rolls. *Id.* c. 26.

ENROULEMENT, *Enroulement*. L. Fr. Enrollment. *Ou enroulement de court que porte record*; or enrollment of a court of record. *Britt.* c. 67. *Fet Assaver*, § 17.

ENS. L. Lat. Being; existence. 3 *Bl. Com.* 322.

ENS. L. Fr. In; within. *Kelham*.

ENSEAL. [from L. Fr. *enseler*, q. v.] To seal. *Ensailing* is still used as a formal word in conveyancing.

ENSECCHER. L. Fr. To dry, or dry up. Sometimes written *ensercher*. *A fower, ensercher, & à carier*; to dig, dry and carry away. M. 7 Edw. III. 1. *Ensecchi*; dried. *Kelham*. *Ensekchies*, in T. 5 Edw. III. 16, is the same word. *Fowes ensekchies*; dry or withered wood cut down.

ENSELER. L. Fr. To seal. *Ensele desouth les seals de jurours*; sealed under the seals of the jurors. *Britt.* c. 58. *Ensele de son seal*; sealed with his seal. *Id.* c. 121. *Ensellomes*; we sealed. *Yearb.* H. 12 Hen. VI. 7.

ENSEMENT, *Ansement*. L. Fr. Also; likewise; in like manner. *Stat. Glocest.* c. 4. *Kelham*.

ENSENSER. L. Fr. To inform; to instruct. *Kelham*. *Ensenses*; instructed. *Britt.* c. 4.

ENSERVE. L. Fr. [from *enserver*, q. v.] Servile; subject to service; the opposite of free. *Ascuns franches, et ascuns enserves*; some free, and some servile. *Britt.* c. 54.

ENSERVER. L. Fr. To make subject to a service or servitude. *Britt.* c. 54.

ENSEVILIR. L. Fr. [from Lat. *sepelire*, to bury.] To bury. *Ensuevely*; buried. *Britt.* c. 11.

ENSEYNER. L. Fr. To show; to point out. *Kelham.*

ENSI, Ensy. L. Fr. So; thus; also; in like manner. *Kelham.* *Ensi totes voies*; provided always. *Id.*

ENSIWER, Ensuer. L. Fr. To ensue; to follow. *Autrement ensiweit cele duresse*; otherwise this hardship would ensue. *Yearb.* T. 1 Edw. II. 10. *Autrement enswereit graunt mischief.* M. 3 Edw. II. 56.

ENT. L. Fr. In; in the mean time. *Kelham.*

ENTAIL. [L. Fr. *entaille*.] A fee entailed; that is, abridged, curtailed or limited to certain heirs.* *Cowell.* *Blount.* 2 *Bl. Com.* 112, *et seq.* See *To entail, Fee tail.*

To ENTAIL. [from L. Fr. *tailler*, from L. Lat. *talliare*, to cut, cut off or limit.] To create an estate in tail; to settle an estate according to a certain rule of descent; to limit to certain heirs.* 2 *Bl. Com.* 113, *et seq.* See *Tail.*

ENTENCION. L. Fr. [from Lat. *intentio*, q. v.] In old pleading. A plaintiff's count or declaration. *Britt.* c. 92. See *Entente.*

ENTENDAUNT. L. Fr. [from *entendre*, q. v.] Attendant. *Britt.* fol. 1 b.

ENTENDEMENT. L. Fr. [from *entendre*, q. v.] Understanding; meaning; signification. *En ceo mot*, mort, *y ad double entendment*; in this word *mort*, (dead,) there is a double meaning. *Britt.* c. 92. See *Id.* c. 53.

ENTENDMENT. The old form of *Intendment*, (q. v.) derived directly from the Fr. *Entendement*, (q. v.) and used by Cowell to denote the true meaning or signification of a word or sentence; that is, the understanding or construction of law.

ENTENDRE. L. Fr. To understand. *Et fait à entendre*; and it is to be understood. *Britt.* c. 40.

To intend. *L. Fr. Dict.*

To attend. *Kelham.*

ENTENT. L. Fr. Understanding. *A ma entent*; according to my understanding; as I understand it. *Yearb.* M. 9 Hen. VI. 3.

ENTENTE. L. Fr. [L. Lat. *intentio*, q. v.] In old pleading. The plaintiff's count, or declaration in a real action. *Et puis die le pleyntyfe sa entente solonc les pointz del brefe original*; and then the

plaintiff shall say (or repeat) his count, according to the points of the original writ. *Britt.* c. 74. See *Id.* c. 75, 91, 47.

ENTER. [from L. Fr. *entrer*, (q. v.); L. Lat. *intrare*.] To take actual possession of lands; to go into, or upon them. See *Entry*. Said to be not confined to the original act of going upon the land. 3 *Jones' Law R.* 298.

In practice. To place a thing properly before a court, and usually in writing; to put upon, or among its records; as to *enter* an appearance, rule or judgment. The word has nearly the same sense of *setting down in writing*, either at large, or in an abridged form, as in mercantile accounts.

ENTER, Entre. L. Fr. In; within. See *Entre.* *Enter mains*; in his hands. *Kelham.*

ENTERCEUR. L. Fr. A party challenging (claiming) goods; he who has placed them in the hands of a third person. *Kelham.*

ENTERFERER. L. Fr. To exchange blows in a combat. *Yearb.* M. 4 Edw. III. 12.

ENTERING. See *Entry*.

ENTERLESSE. L. Fr. Left out; omitted. *Stat. of Additions*, 1 Hen. V. c. 5. 2 *Inst.* 665. *Enterlessant*; leaving out. *Yearb.* P. 7 Hen. VI. 12.

ENTERLINE. The old form of *Interline*. *Finch's Law*, b. 4, ch. 9, p. 281.

ENTERMARRIAGE. The old form of *Intermarriage*. *Finch's Law*, b. 1, ch. 3, num. 55. 1 *Leon.* 3.

ENTERPLEDER. The old form of *Interpleader*, (q. v.) used by Cowell.

ENTIER. L. Fr. Entire; whole. *Entier sanke*; the whole blood. *Litt.* sect. 2.

ENTIERCIR. L. Fr. To deposit a thing with a third person, till the property is proved. *Kelham.*

ENTIRE. [from Fr. *entier*.] Whole; without division, separation or diminution.

ENTIRETE, Entiertie. L. Fr. The whole; the entirety. *Kelham.*

ENTIRETY. [L. Fr. *entiertie*, from *entier*, whole.] The whole, in contradistinction to a moiety or part only. When land is conveyed to husband and wife, they do not take by moieties, but both are seised of the *entirety*. 2 *Kent's Com.* 132. 4 *Id.* 362. Parceners, on the other hand, have not an *entirety* of interest, but each is properly entitled to the whole of a distinct moiety. 2 *Bl. Com.* 188.

ENTORSE, *Entoir, Entour, Entur.* L. Fr. About; round; concerning. *Kelham.*

ENTRE. Fr. and L. Fr. In; within; between. *Entre ses bras*; within her arms. *Britt.* c. 23. A term applied to a husband *de facto*. See *Infra brachia. Entre mains*; in the hands. *LL. Gul. Conq.* l. 25. *Entre les mains*; between the hands. *Ord. Mar.* liv. 4, tit. 2, art. 1.

ENTRE, *Entree.* L. Fr. [from *entrer*, q. v.] Entry. *Brefe d'entre*; a writ of entry. *Britt.* c. 114. *Bref de entree. Fet Assaver*, § 15.

ENTREBAT. L. Fr. An intruder or interloper. *Britt.* c. 114.

ENTREGA. Span. Delivery. *Las Partidas*, part 6, tit. 14, l. 1.

ENTRELIGNURE. L. Fr. Interlineation. *Kelham.*

ENTREMETTRE. L. Fr. [from Lat. *intromittere*, to let or put in.] To intermeddle; to intrude into. *Britt.* c. 58. *Qui se ad entremys del office*; who shall have intruded into the office. *Id.* c. 16.

ENTRER. L. Fr. [from Lat. *intrare*, q. v.] To enter. *Entrast*; enters. *Britt.* c. 114. *Entrant*; enter. *Id. ibid.*

ENTREVAL. L. Fr. An interval. *Après long entreval.* *Britt.* c. 111.

ENTRUSION. An old form of *Intrusion*, (q. v.) used by Cowell.

ENTRY. [L. Lat. *intratto*.] In practice. The putting a proceeding on record, in proper technical language and order.* A judgment record is composed of *entries* of the various proceedings in the action, actual or formal, in a certain order. *Books of entries* are books containing forms or precedents of the proceedings in various actions, as they appear on record. They were formerly much relied on. 3 *Bl. Com.* 271, note.

ENTRY. [L. Fr. *entre, entree*; L. Lat. *ingressus, introitus*.] The actual taking possession of lands or tenements, by entering into, or setting foot upon the same; an extra-judicial and summary remedy against certain species of injury by ouster, (viz. abatement, intrusion, and disseisin,) used by the legal owner, when another person who has no right has previously taken possession of lands or tenements. 3 *Bl. Com.* 5, 174. 1 *Steph. Com.* 469, 470. *Crabb's Hist. Eng. Law*, 402, 403. *Burton's Real Prop.* 120, et seq. 1 *Hilliard's Real Prop.* 83. 2 *Id.* 151. *Tomlins*. It must be peaceable and without force. 3 *Bl. Com. ub. sup.*

ENTRY. In the law of burglary. An act, which, in addition to breaking, (q. v.) is essential to complete the offence of burglary. Any, the least degree of entry, with any part of the body, or with an instrument held in the hand, is sufficient for this purpose; as to step over the threshold, to put a hand or a hook in at a window to draw out goods, or a pistol to demand one's money, are all of them burglarious entries. 1 *Hale's P. C.* 555. 4 *Bl. Com.* 227. So, if the prisoner breaks open a shop window, and with his hand takes out goods, the offence is complete. *Foster's C. L.* 107. *Russ. & Ry. C. C.* 499. Introducing the hand between the glass of an outer window and an inner shutter, is sufficient entry to constitute burglary. *Id.* 341. See 4 *Chitty's Bl. Com.* 227, note. 1 *Russell on Crimes*, 794—797. *Wharton's Am. Crim. Law*, 356. *Lewis' U. S. Crim. Law*, 131.

ENTRY, Writ of. [L. Fr. *brefe d'entre*; L. Lat. *breve de ingressu*.] A species of real action, of great antiquity in English law, and, until a comparatively recent period, the general remedy to recover the possession of lands when wrongfully withheld from the owner. 3 *Bl. Com.* 180, 183. Its object was to regain the possession of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged to the *possessory* division of real actions. 3 *Bl. Com.* 180. *Roscoe's Real Act.* 3. It decided nothing with respect to the *right of property*, but only restored the demandant to that situation in which he was, (or by law ought to have been,) before the dispossession committed. 3 *Bl. Com.* 180. There were many varieties of writs of entry under the several titles of *Dum fuit non compos mentis*, *Dum fuit infra ætatem*, *Dum fuit in prisona*, *Ad communem legem*, *In casu proviso*, *In casu consimili*, *Cui in vita*, *Sur cui in vita*, *Cui ante divortium*, *Sur cui ante divortium*, *Quare ejecit infra terminum*, *Ad terminum qui præterit*, and *Causa matrimonii prælocuti*; all of which have been recently abolished in England, by statute 3 & 4 Will. IV. c. 27. *Roscoe's Real Actions*, 3, 88—100. See the above titles.

The writ of entry was directed to the sheriff, requiring him to *command* the tenant of the land that he render (*præcipe quod reddat*) to the demandant, the land in question, which he claims to be his right and inheritance, and of which (*de quo*, or

de quibus) the said tenant, unjustly and without judgment, disseised [him or] his ancestor, within the time limited by law for such actions, or that upon refusal, he do appear in court on such a day, to show wherefore he hath not done it. *Reg. Orig.* 229. This was the common or simple form of the writ, (called a writ of entry *in the quo* or *quibus*,) where it was brought against the party himself that did the wrong. 3 *Reeves' Hist. Eng. Law*, 33. 3 *Bl. Com.* 181. If, however, he had made any alienation of the land, or it had descended to his heir, that circumstance was required to be alleged in the writ. This led to certain variations in the form, from which the writ was technically called a writ of entry "in the *per*," "in the *per* and *cui*," or, "in the *post*," according to the number of descents or alienations which had taken place. *Id. ibid.* *Reg. Orig.* 229. See *infra*.

ENTRY IN THE PER, *Writ of*. A writ of entry, so called from the words "*et in quod idem A. non habet ingressum, nisi per E. qui illud ei dimisit*," and into which the said A. (the tenant) hath not entry, unless by E. (the original wrong-doer,) who demised it to him. 3 *Bl. Com.* 181. 3 *Reeves' Hist.* 34. This was called a writ of entry on the first degree, or on the first alienation or descent of the land. *Id. ibid.*

ENTRY IN THE PER AND CUI, *Writ of*. A writ of entry, so called from the words "*et in quod non habet ingressum, nisi per C. cui D. illud dimisit*," &c.; and into which he hath not entry unless by C. to whom D. demised it, &c. *Reg. Orig.* 229. 3 *Reeves' Hist.* 33. 4 *Bl. Com.* 181. This was called a writ of entry in the second degree. *Id. ibid.*

ENTRY IN THE POST, *Writ of*. A writ of entry, so called from the words "*et in quod non habet ingressum, nisi post disseisinam quam L. inde injuste et sine iudicio fecit C. patri vel alio antecessori predicti B. &c.*," and into which he hath not entry, unless after the disseisin which L. unjustly and without judgment thereof made to C. the father, or other ancestor of the aforesaid B. &c. *Reg. Orig.* 229. This writ was given by the statute of Marlbridge, (c. 30,) in cases where the number of alienations or descents exceeded the usual degrees, no mention of degrees being required to be made in it. The writ merely alleged the injury of the wrong-doer, without deducing all the intermediate title from him to the tenant. 3 *Bl. Com.* 182.

ENTZ, *Enz.* L. Fr. But. *Kelham*.

ENURE. [from L. Fr. *enurer*, *enuer*, *urer*.] To take effect; to take place; to operate. *Un releas prendra effect et urera*; a release shall take effect and enure. *Litt.* sect. 305, 306, 307. See *Id.* sect. 465, 479, 486. *Co. Litt.* 193 a, b, 273.

ENVEER, *Envoyer*. L. Fr. To send. *Kelham*. See *Envoyer*. *Envices*; sent. *Conf. Cart.* 25 *Edw.* I.

ENVERS, *Enverz.* L. Fr. Against. *Litt.* sect. 58. 1 *And.* 8. *Envs. Yearb.* T. 4 *Edw.* III. 7.

ENVOY. In international law. A public minister of the second class, ranking next after an ambassador. *Wheaton's Intern. Law*, 277.

ENVOYER. L. Fr. To send. *Envoye*; sent. *Britt.* c. 21. *Envoyes à notre gaole.* *Id.* c. 100. *Envoyable.* *Id.* c. 110.

To send for; to summon to court. *Rot. Parl.* 4 *Hen.* IV.

ENZ. L. Fr. In; within; but. *Kelham*.

EO. Lat. In the civil law. In so much, for as much; (*in tantum*). *Calv. Lex. Jur.* Used also by the canonists.

For the reason, (*propterea*). *Id.*

There, (*ibi*). *Id.*

EO INSTANTE. L. Lat. At that instant; at the very or same instant; immediately. 1 *Bl. Com.* 196, 249. 2 *Id.* 168. *Co. Litt.* 298 a. 1 *Co.* 138.

EO INTUITU. L. Lat. With or in that view; with that intent, or object. *Hale's Anal.* sect. ii. See *Intuitus*.

EO LOCI. Lat. In the civil law. In that place, (*eo loco*), there. *Dig.* 5. 1. 19. 2.

In that state or condition. *Calv. Lex.*

EO NOMINE. Lat. Under that name; by that appellation. *Perinde ac si eo nomine tibi tradita fuisset*; just as if it had been delivered to you by that name. *Inst.* 2. 1. 43. A common phrase in the books.

EOD', (abbreviation of *eodem*) in references in the civil law, refers to the title last quoted. *Tayl. Civ. Law*, 25.

EODEM. Lat. By the same; by the said. 2 *Ld. Raym.* 888, arg. See *Idem*.

Eodem modo quo quid constituitur, dissolvitur. In the manner in which [by the same means by which] a thing is constituted, is it dissolved. 6 *Co.* 53 b.

EORLE. Sax. [L. Lat. *eorla*.] A word adopted by the Saxons from the Danish *jarl*, and applied to the *ealdorman*, and afterwards to the count (*comes*) of the

Normans. Hence the English *earl*. *Spelman*, voc. *Eorla*. *Gilb. C. Pleas, Introd.* notes. 1 *Bl. Com.* 398. See *Earl*. The *eorl* or *eorle* is mentioned in the laws of Canute, par. 2, c. 69. *Spelman, ub. sup.* Through ignorance of the Saxon letters, this word is printed *cople*, in the French edition of Montesquieu's *Spirit of Laws*, (ed. Sarrebruck, 1782, liv. 30, c. 18,) and the error is retained in the English translation. (Am. ed. Worcester, 1802.)

EOS. L. Fr. Use. *Kelham*.

ΕΠ'ΑΥΤΟΦΡΩ, Εξ'αυτοφρού. Gr. [from *επι*, in, *δύω*, very, and *φρῶ*, theft.] In the civil law. In the very act; in the act of theft. *Inst.* 4. 1. 3. *Schrev. Lex.* See *Furtum manifestum*.

ΕΠΙΕΙΚΕΙΑ, 'Επιεικία. Gr. [from *επι*, and *εἰκω*, to be like.] Equity, equality; the fitting, adapting or adjusting of one thing to another, (*convenientia*).* *Calv. Lex. Jur.* See *Equity*.

ΕΠΙΕΙΚΕΣ, 'Επιεικεις. Gr. [from *επι*, and *εἰκω*, to yield, to be like.] Equitable; fit or becoming; moderate or mild; (*æquum et bonum*). *Calv. Lex.* *Schrev. Lex.*

Equity, as moderating the rigor of the law, or equalizing and adjusting rights according to circumstances. See *Equity*.

EPISCOPALIA. L. Lat. [from *episcopus*, q. v.] In ecclesiastical law. Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, formerly collected by the rural deans. *Cowell*.

ΕΠΙΣΚΟΠΩΣ, 'Επισκοπος. Gr. [from *επισκοπέω*, to look around upon, to oversee.] A bishop; an overseer, supervisor or superintendent. *Calv. Lex.* See *Episcopus*.

EPISCOPUS. Lat. [from Gr. *επισκοπος*, q. v.] In the civil law. A superintendent, or overseer. *Episcopi qui præsumt panem et ceteris venalibus rebus*; overseers who have the charge of bread and other things exposed for sale. *Dig.* 50. 4. 18. 7.

EPISCOPUS. Lat. [from Gr. *επισκοπος*, q. v.] A bishop. *Cod.* 1. 3. *Calv. Lex.* *Feud.* lib. 2, tit. 20. *Fleta*, lib. 2, c. 69.

EPISTOLA. Lat. In old European law. A letter or epistle. *Calv. Lex.*

A charter; any instrument in writing for the conveyance of lands or the assurance of contracts; (*instrumentum quo prædia conceduntur, pactionesque firmanur*). *Spelman*. See *Letter*. *Spelman* refers to Casiodorus and Marculfus, to show that all deeds or charters were, during, and after the lower empire, (*ab inclinato imperio*),

called *epistolæ*; commencing as a letter, with an address and salutation. Hence the origin of the ancient form of charters or deeds in England, which commenced with — *Omnibus Christi fidelibus ad quos hoc præsens scriptum pervenerit, N. de D. salutem. Sciatis, &c.* "To all the faithful of Christ to whom this present writing shall come, N. of D. sends greeting: Know ye, &c." The same form of commencement is still preserved, with some modification, in our modern deeds poll.

EPISTOLA. Lat. In the civil law. An opinion of the emperor upon a case submitted to him, or a decision in answer to a petition; a rescript. *Inst.* 1. 2. 6. *Tayl. Civ. Law*, 229, 230.

Equality is equity. *Francis' Max.* 9. max. iii. Thus where an heir buys in an incumbrance for less than is due upon it, (except it be to protect an incumbrance to which he himself is entitled,) he shall be allowed no more than what he really paid for it, as against other incumbrancers upon the estate. 2 *Vent.* 353. 1 *Vern.* 49, S. P. 1 *Salk.* 155. For the taking away one man's gain to make up another's loss, is making them both equal; and here the gain the heir would have made, if the whole money due on the incumbrance should be allowed him, shall be taken from him, to make up the loss of the other incumbrancers upon the estate. *Francis' Max. ub. sup.* This maxim is also applied to cases of contribution between sureties and others; to cases of abatement of legacies, where there is a deficiency of assets; and especially to cases of the marshalling and distribution of equitable assets. 1 *Story's Eq. Jur.* § 64 f. See *Æquitas*.

EQUES. Lat. A knight. *Spelman*. 1 *Bl. Com.* 404. So called because serving on horseback. *Id. ibid.*

Equus auratus; a knight, so called from the gilt spurs he wore. *Id. ibid.* *Spelman*, who himself bore this title, says its object was to distinguish one who had been created a knight with due ceremony, (*ritu honorario institutum*), from one who merely assumed the title. According to *Cowell*, it is never used in law, *miles* (q. v.) being the proper word.

EQUITABLE. By operation of equity; cognizable in equity. See *infra*.

EQUITABLE ASSETS. Such assets as, at law, cannot be reached by a creditor. 3 *Wooddes. Lect.* 290, and notes. Equitable assets are all assets which are chargea-

ble with the payment of debts or legacies in equity; and which do not fall under the description of *legal assets*. 1 *Story's Eq. Jur.* § 552. See *Legal assets*.

EQUITABLE ESTATE. An estate acquired by operation of equity, or cognizable in a court of equity; such as the estate or title of a person for whose use or benefit lands are held in trust by another, the latter having the legal estate; and the estate of a mortgagor, after the mortgage has become forfeited by non-payment, and before foreclosure.* 1 *Steph. Com.* 217, 285, 328. 2 *Crabb's Real Prop.* 5, § 947, 442. *Holthouse*. See *Equity of redemption, Trust*.

EQUITABLE MORTGAGE. A mortgage arising in equity, out of the transactions of the parties, without any deed or express contract for that special purpose. 4 *Kent's Com.* 150. Thus, if a debtor deposits his title deeds with a creditor, it is evidence of a valid agreement for a mortgage, and amounts to an *equitable mortgage*, which is not within the operation of the statute of frauds. *Id. ibid.* *Burton's Real Prop.* 484, pl. 1570. *Cross on Lien*, chap. x. *Miller's Law of Equitable Mortgages*, 1, *et passim*. 2 *Crabb's Real Prop.* 848—855, §§ 2203—2208. 1 *White's Lead. Equity Cases*, 440. *Id.* 465, (Am. ed.) note. In Pennsylvania, the validity of this kind of mortgage is not recognized. 3 *Penn. St. (Barr's) R.* 233.

The mortgage of an equitable estate or interest. *Holthouse*. *Miller's Law of Eq. Mortg.* 1.

EQUITATURA. L. Lat. [from *equitare*, to ride.] In old English law. Traveling furniture, or riding equipments, including horses, horse harness, &c. *Reg. Orig.* 100 b. *Stat. Westm.* 2, c. 39.

EQUITY. [Lat. *æquitas*; from *æquus*, equal, even, just; Gr. *ἐκκισία*, qq. v.] In a general sense,—natural right or justice, as addressed to the conscience, independently of any express or positive rule or law; otherwise termed *natural* or *moral equity*. In this large sense, equity belongs to the science of morals, rather than of jurisprudence. See 1 *Story's Eq. Jur.* §§ 1, 2.

In a stricter sense,—the application of the principles of natural right and reason in the actual administration of justice; either by supplying rules for cases not provided for by the positive law, by mitigating the rigor of the law itself by a liberal and

rational interpretation of its rules, or by adapting its remedies more exactly to the exigencies of particular cases. Otherwise termed *civil equity*. This definition presents equity as a part or branch of jurisprudence, but expresses its ancient more fully than its modern meaning, being founded essentially on the definition of Aristotle—*ἐκπύρωμα του νομου ἢ ἑλλείπει διὰ τὸ καθόλου*, (the correction of the law, where it is defective, by reason of its universality). *Arist. Eth. Nicom.* lib. v. c. 10. This is equity, as contradistinguished from strict or mere law, (*strictum et summum jus*). and as it was recognized and applied in Roman jurisprudence; it being the province of the prætor, or equity judge, to assist, supply, interpret and moderate the law. *Dig.* 1. 1. 7. On nearly the same basis, a modern writer of authority has defined equity to be “a judicial interpretation of laws, which presupposing the legislature to have intended what is just and right, pursues and effectuates such intention.” 1 *Wooddes. Lect.* 114. And Blackstone, in much fewer words, has explained equity to be the “sound interpretation of the law,” and “the method of interpreting laws by the reason of them.” 1 *Bl. Com.* 61. 3 *Id.* 431. And yet the same writer has clearly shown this to be an insufficient definition of equity, as actually administered (distinct from law) in the courts. *Id.* 429—437. 1 *Story's Eq. Jur.* §§ 7—20.

EQUITY. A system of jurisprudence collateral to, and, in some respects, independent of law, properly so called; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect; or by exercising certain branches of jurisdiction independently of them. This is equity in its proper modern sense; an elaborate system of rules and process, administered in many cases by distinct tribunals, (termed courts of chancery,) and with exclusive jurisdiction over certain subjects. It is “still distinguished by its original and animating principle, that no right should be without an adequate remedy,” and its doctrines are founded upon the same basis of natural justice; but its action has become systematized, deprived of any loose and arbitrary character which might once have belonged to it, and as carefully regulated by fixed rules and precedents as the law itself. It is also no longer a mere principle

or even system of *interpretation*, but a system of *practical remedy*, remarkably direct and thorough in its operation, from its close investigation of facts, and its precise adaptation of remedies. This quality is due perhaps to the peculiarity of its process, or mode of procedure, which is according to the course of the *civil law*, and is regarded by Blackstone as the chief characteristic of the whole system. 3 *Bl. Com.* 436. Equity, in this view, has become in many respects a distinct branch of jurisprudence, and the exclusive jurisdiction it possesses over certain subjects, as trusts, infants and the specific performance of contracts, has tended to make it emphatically such. But in other important particulars, it retains its original character of an auxiliary and even dependent system. Over certain important subjects, as fraud, accounts, mistake and accident, its jurisdiction is merely concurrent with that of the common law, and its essential dependence on the law is well expressed by the maxim, *æquitas sequitur legem*, (q. v.)

* * Under some systems of jurisprudence, equity, as already observed, is kept carefully distinct from law, being administered not only in distinct tribunals, but according to a peculiar course of procedure or practice. This is the case in England, and in some of the United States, and was so formerly in the state of New-York, and it has the sanction of the very highest authority. "All nations," says Lord Bacon, "have equity; but some have law and equity mixed in the same court, which is the worse; and some have it distinguished in several courts, which is the better." *Bacon's Works*, iv. 274. Under other systems, especially those of most modern date, not only is equity administered by the same courts, but according to the same course and practice. In New-York, the Code of Procedure has abolished all distinction between legal and equitable remedies, and blended them into one system, combining, or professing to combine the principles peculiar to each. 4 *Comstock's R.* 600. But see 3 *Kernan's R.* 488. This blending of the practice of the courts has been pointedly condemned by the Supreme Court of the United States in several recent cases; and the rule laid down that, as the Constitution of the United States has recognized the distinction between law and equity, it must be observed in the federal courts. 11 *Howard's R.*

669. See 20 *Id.* 523, 524—526. *Id.* 552, 555. And see 3 *Jones' Law R.* 290, 294.

Equity follows the law. Talbot, C. *Cas. temp. Talb.* 52. 1 *Story's Eq. Jur.* § 64. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. *Id. ibid.* A leading maxim of equity jurisprudence, which, however, is not of universal application, but liable to many exceptions. *Id.* §§ 64—64 b. See *Æquitas sequitur legem*.

Equity looks upon that as done which ought to have been done. 1 *Story's Eq. Jur.* § 64 g. Equity will treat the subject matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them. *Id. ibid.*

He who seeks equity must do equity. 1 *Story's Eq. Jur.* § 64 a. He that will have equity done to him [by another,] must do it to the same person. *Francis' Max.* 1.

He that hath committed iniquity shall not have equity. *Francis' Max.* 5, max. 2.

Where equity is equal, the law must prevail. *Francis' Max.* 6, max. 14. See 2 *Jones' Eq. R.* 468, 469.

EQUITY, COURTS OF. Courts which administer justice according to the system of equity, and according to a peculiar course of procedure, or practice. See *Equity*. Frequently termed courts of chancery. See 1 *Bl. Com.* 92.

EQUITY OF REDEMPTION. The right which equity gives to a mortgagor, of redeeming his mortgaged estate after the appointed period has gone by, for repayment of the sum of money which was due on the mortgage. *Holthouse.* 2 *Bl. Com.* 158, 159. 1 *Steph. Com.* 284, 285. 4 *Kent's Com.* 158, 162. 2 *Crabb's Real Prop.* 898, § 2261, et seq. It is a species of equitable estate, and is considered to be the real and beneficial estate, tantamount to the fee at law. 1 *Steph. Com.* 328. 4 *Kent's Com.* 159. In Pennsylvania, it is a legal right. 11 *Serg. & R.* 223.

EQUIVOCAL. [Lat. *equivocum*, *equivocum*, from *æquus*, equal, and *vox*, a word.] Of several meanings or significations, (*multiplex*).

Of doubtful signification, (*ambiguum*). See *Equivocum*.

EQUIVOCUM. See *Equivocum*.

ERASURE. [from Lat. *e*, out, and *radere*, to scrape.] A scraping, scratching or rubbing out. The removal of one or more words or parts of words from a writing, by scraping the letters from the paper, with a sharp or rough instrument or substance, otherwise called *rasure* (*rasura*). See *Rasure*.

The place in a writing where a word or letter has been erased.

Removal of a word or part of a word from a writing, by any means; obliteration. This is an improper sense of the word.

ERCEVESQUE. L. Fr. Archbishop. *Stat. Westm.* 1, 3 *Edw.* I.

ERCISCERE. Lat. In the civil law. To divide or partition. A very ancient word. See *Erciscundus*. Written also *Herciscere*, (q. v.)

ERCISCUNDUS. Lat. In the civil law. To be divided. *Judicium familiae erciscundæ*; a suit for the partition of an inheritance. *Inst.* 4. 17. 4. *Id.* 3. 28. 4. *Id.* 4. 6. 20. An ancient phrase derived from the Twelve Tables. *Calv. Lex. Jur.* See *Herciscunda*.

"**ERECT.**" [Lat. *erigere*.] One of the formal words of incorporation in royal charters. "We do — incorporate, erect, ordain, name, constitute and establish." *Patent of New-England*, 18 Jac. I. See *Eriginus*.

ERER, Arer. L. Fr. To plough. *Kelham*. See *Arer*.

ERABILIS. L. Lat. A maple tree. Sometimes confounded with *arabilis*, (arable land). See *Barringt. Obs. Stat.* 217.

ERGO HIC. Lat. Therefore here; words used in argument in old cases. *Fearb.* P. 10 *Edw.* III. 35. *Ergo nec hic*; therefore neither here.

ERGOLABI. Græco-Lat. [from Gr. *ergon*, work, and *labavon*, to take.] In the civil law. Undertakers of work; contractors. *Cod.* 4. 59.

ERIACH, in the Irish Brehon law, was a pecuniary satisfaction or recompense, (corresponding in some degree with the *weregild* of the Saxon law,) which a party guilty of murder was condemned to pay to the wife or child or friends of the deceased.* 4 *Bl. Com.* 313. The same, probably, with *enach*, in old Scotch law. *Skens de Verb. Sign. voc. Enach*.

ERIGIMUS. Lat. We erect. One of the words by which a corporation may be created in England by the king's charter. 1 *Bl. Com.* 473.

ERIT. Lat. [future of *sum*, *esse*, to be.] Shall be. This word, in the civil law, was sometimes understood as denoting the past tense. *Dig.* 50. 16. 123.

ERMING-STREET. One of the four great public ways through England, in the times of the Saxons. *LL. Edw. Conf.* c. 12. *LL. Gul. Conq.* l. 30. *Spelman*, voc. *Ikenild-street*.

ERRANT, Erraunt. L. Fr. and Eng. [from L. Fr. *erir*, *erir*, *erir*; to travel, to go about.] In English law. Itinerant; travelling about. A term formerly applied to justices, who went the circuit (otherwise called justices in eyre,) and to bailiffs at large. *Cowell. Britt.* fol. 1 b. See *Bailiffs errant, Eyre*.

ERRATICUM. L. Lat. In old law. A waif or stray; a wandering beast. *Cowell*.

ERRER. L. Fr. To go. *Kelham*. *Erra*; shall go. *Id.*

ERRO. Lat. In the civil law. A truant slave. *Dig.* 21. 1. 17. 14.

ERROIS. L. Fr. Irish. *Kelham*.

ERRONICE. L. Lat. In old practice. Erroneously; through mistake. *Felv.* 83.

ERROR. Lat. and Eng. [L. Fr. *erreur*, *erreur*.] In practice. A mistake in the foundation, proceedings, judgment or execution of a suit in a court of record, in matter of law or of fact; and to correct which a writ of error lies.* *Co. Litt.* 288 b.

ERROR, Writ of. [L. Lat. *breve de errore*; L. Fr. *breve d'erreur*.] In practice. An original writ which lies after judgment in an action at law, in a court of record, to correct some supposed mistake in the proceedings or judgment of the court.* 3 *Bl. Com.* 406. 2 *Tidd's Pr.* 1134, 1140. 1 *Arch. Pr.* 230. *Co. Litt.* 288 b. Sometimes simply termed *error*. It lies for some error or defect in substance, that is not aided, amendable or cured at common law, or by some of the statutes of amendments or jeofails; and it lies to the same court in which the judgment was given, or to which the record was removed by writ of error, or to a superior court. 2 *Tidd's Pr.* 1136. In England, if a judgment in the Queen's Bench be erroneous in matter of fact only, and not in point of law, it may be reversed in the same court by writ of error *coram nobis*, and in the Common Pleas, the same

writ is called a writ of error *coram vobis*; the writ in these cases being merely in the nature of a commission to the judges to examine the error, without removing the record out of the court. *Id. ibid.* 1137, 1143. See *Coram nobis*, *Coram nobis*. The same kind of writ, under the name of a writ of error for error in fact, is in use in such of the United States as follow the English practice. But the most usual and important species of writ of error is that which lies for error in law, and which removes the record to a superior court, in order to have the judgment reviewed. This writ is well described as consisting of two parts, a *certiorari* to remove the record, and a commission to examine it. 2 *Tidd's Pr.* 1134, 1143. 1 *Arch. Pr.* 220, 230. When the record, or a transcript of it has been removed to the superior court in compliance with the writ, the particular error complained of is brought before the court by means of pleadings and issue thereon; and after argument on the points presented by the parties, if the court be of opinion that there is error in the judgment of the court below, it proceeds to reverse the judgment; otherwise, the judgment is affirmed. See *United States Digest*, Error.

Under the new practice introduced in England, by the Common Law Procedure Act of 1852, writs of error are, in most cases, abolished. They have also been abolished in New-York, Ohio, Indiana, and several other states. See *Writ of error*.

ERROR. Lat. Error; mistake. 1 *Mackeld. Civ. Law*, 163. *Calv. Lex.* See *Ignorantia*.

Error juris nocet. Error of law injures. A mistake of the law has an injurious effect; that is, the party committing it must suffer the consequences. 1 *Mackeld. Civ. Law*, 163, § 165, and notes. 1 *Story's Eq. Jur.* § 139, note.

Error nominis nunquam nocet, si de identitate rei constat. A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself, [where the thing intended is certainly known]. 1 *Duer on Ins.* 171. This maxim is applicable only where the means of correcting the mistake are apparent on the face of the instrument to be construed. *Id. ibid.*

Error qui non resistitur approbatur. An error which is not resisted or opposed, is approved. *Doct. & Stud.* c. 40.

Error facinus nuda veritate in multis est probabilior; et saepenumero rationibus vincit veritatem error. Error artfully disguised [or colored] is, in many instances, more probable than naked truth; and frequently error overwhelms truth by [its show of] reasons. 2 *Co.* 73.

Error scribentis nocere non debet. The mistake of a writer [a clerical error] ought not to injure. *Jenk. Cent.* 325, case 42.

Errores ad sua principia referre, est refellere. To refer errors to their sources is to refute them. 3 *Inst.* 15. To bring errors to their beginning is to see their last. *Id. ibid. in marg.*

ERROUR. L. Fr. [from Lat. *error*,] Error; mistake. *Britt. c.* 26.

ERS. L. Fr. Heirs. *Kelham*.

ERUDICION. L. Fr. Learning; doctrine. *Ceo est un comon erudicion en nostre ley*; this is a common doctrine in our law. *Yearb. M.* 20 Hen. VI. 16. See *Dyer*, 27 b, 33, (Fr. ed.)

ESBRANCATURA. L. Lat. [from Fr. *esbrancher*.] In old law. A cutting off the branches or boughs of trees. *Cowell. Spelman*.

ESCA. Lat. In old European law. Nuts of trees, or mast, used as the food of swine, deer and other animals. *Spelman, LL. Longobard.* lib. 1, tit. 23, l. 3; cited *ibid.*

ESCÆTA. L. Lat. In old English law. An escheat. *Mag. Chart.* 9 Hen. III. c. 31. *Reg. Orig.* 164 b. *Escæta* vulgo dicuntur quæ, decedentibus his qui de rege tenent in capite, cum non extat ratione sanguinis hæres, ad fiscum relabuntur; those things are commonly called escheats, which, on the death of the king's tenants in capite, without heirs of blood, revert to the fisc, or treasury. *Lib. Nig. Scacc.* par. 2, c. 10, cited in *Spelman*, voc. *Eschæta*.

ESCÆTOR. L. Lat. In old English law. An escheator. *Reg. Orig.* 247, 256. See *Escheator*.

ESCAMBIO, Breve de. L. Lat. In old English law. A writ of exchange. A license in the shape of a writ, formerly granted to an English merchant, to draw a bill of exchange on another in foreign parts, (*in partibus exteris*). *Reg. Orig.* 194.

ESCAMBIUM, Eschambium, Excam-bium. L. Lat. In old English law. Exchange. See *Escambio, Excam-bium*.

Recompense in value. Anciently, when

land was recovered of a tenant, as in an action of dower, and the tenant had vouched another to warranty, he was allowed out of the vouchee's land enough to make up for what he had lost, which was called *escambium ad valentiam*; (L. Fr. *eschaunge a la vaillaunce*). *Bract.* fol. 27, 296 b, 301, 387 b. *Britt.* c. 75, 105.

ESCAPE. [L. Lat. *escapium*, *eschapium*, from L. Fr. *eschaper*, *escapper*; Lat. *effugere*, to fly from.] In practice. A violent or privy evasion out of some lawful restraint. *Cowell.*—The gaining one's liberty after being arrested or imprisoned, before being delivered by course of law. 4 *Steph. Com.* 254. *Termes de la Ley.*

Any liberty given to a prisoner not authorized by law. 5 *Mass. R.* 310.

An escape from arrest under civil process is either *negligent* or *voluntary*; *negligent*, where the party escapes, without the knowledge or consent of the sheriff or his officer; *voluntary*, where the sheriff or his officer permits him to go at large. 3 *Bl. Com.* 415. 1 *Arch. Pr.* 85. *Sewell's Sheriff*, 441. If a defendant, having been once taken in execution, be afterwards seen at large for any, the shortest time, even before the return of the writ, it is an *escape*, unless it be by consent of the plaintiff himself, given previously to, or at the time of the discharge, founded on a good consideration, or under the authority of a writ of *habeas corpus ad testificandum*, or where the defendant has been discharged under an insolvent act. 8 *Johnson's R.* 472. 10 *Id.* 220. 16 *Id.* 181. 18 *Id.* 48. 1 *Salk.* 271. 1 *Show.* 174. 3 *Wendell's R.* 184. 1 *Burr. Pr.* 312. *United States Digest*, *Escape*.

The escape of a person lawfully arrested for crime is itself a crime punishable by fine and imprisonment. 4 *Steph. Com.* 254. See *Wharton's Am. Crim. Law*, 551. *Lewis' U. S. Crim. Law*, 241, *et seq.*

ESCAPE WARRANT. In English practice. A warrant granted by statute 1 Ann. c. 6, and 5 Ann. c. 9, to retake a prisoner who has escaped from custody on execution, or mesne process. It is issued on an affidavit of the escape, made before a judge of the court in which the action was brought, and is directed to all sheriffs, &c., throughout England, commanding them to retake the prisoner, and to commit him to gaol where taken, there to remain until the debt is satisfied. *Tomlins. Jacob.*

ESCAPIUM, Escapia. L. Lat. In old English law. An escape. *Reg. Orig.* 312.

A chance, or accident. *Cowell.* See *Escapium*.

ESCHÆTA, Escæta. L. Lat. In old English law. An escheat. *Spelman. Bract.* fol. 30. See *Escheat*.

The falling of a material object, as a tree; the appendages of a tree felled or cut down. *Cart. ex. Reg. Eccl. Norwic.* cited in *Cowell.* Whatever fell or dropped from trees. *Escætas quercuum*; escheats of oaks. *Fleta*, lib. 2, c. 41, § 24. See *Escheat*.

The droppings of straw on the ground. *Fleta*, lib. 2, c. 73, § 9.

ESCHÆTOR, Escætor. L. Lat. In old English law. An escheator. *Spelman.* See *Escheator*.

ESCHAMBIUM. L. Lat. In old English law. Exchange. *Bract.* fol. 322 b. Another form of *Escambium*, (q. v.)

ESCHANGE, Eschaunge. L. Fr. Exchange. A title in the old abridgments of Fitzherbert, Brooke, and Viner.

En eschange, il convient que les estates soient egales. In an exchange, it behooves that the estates should be equal. *Litt.* sect. 64. *Co. Litt.* 50 b. That is, equal as to the quantity of interest. *Id. ibid.* 2 *Hilliard's Real Prop.* 298.

ESCHAPER. L. Fr. To escape. *Et se le prisoun que avera eschape, soit eschape hors de la garde*; and if the prisoner who shall have escaped, be escaped out of the custody. *Britt.* c. 11. See *Id.* c. 21.

ESCHAPIUM. L. Lat. Chance, hap, or accident; a casual opportunity. *Bract.* fol. 230. *Cowell*, voc. *Escapium*.

ESCHAUDE. L. Fr. Smothered. *Kelham.* Famished; choked. *L. Fr. Dict.* But *quære*.

ESCHAUNGE. L. Fr. Exchange. *Britt.* c. 54. *Eschaunges a la vaillaunce*; exchanges to the value. *Id.* c. 75.

ESCHEAT. [L. Fr. *eschete*, *eschet*, from *eschier*, *eschoir*, to fall or happen; L. Lat. *eschæta*, *escata*. A falling or happening.] In feudal and English law. The falling (falling back or reverting) of lands, by accident or chance, to the lord of whom they are holden, in consequence of the extinction of the blood of the tenant, either by his dying without heirs, (*propter defectum sanguinis*), or by his attainder for treason or felony, (*propter delictum tenentis*).^{*} *Co. Litt.* 18 a, 92 b. 2 *Bl. Com.* 72, 73. *Id.* 244, 245. 1 *Steph. Com.* 401, 402, 414.

1 *Crabb's Real Prop.* 638, § 818. 2 *Id.* 1028, 2411. Mr. Stephen distinguishes between *escheat* properly so called, and *forfeiture*; the former being the effect of the death of the tenant without heirs, the latter of his violation of his duty to his lord. 1 *Steph. Com.* 166. A distinction is also made in the case of attainder, between *escheat* to the lord of the fee, and *forfeiture* to the crown. *Id.* 409. See *Forfeiture*. But both words seem to have been used indifferently to signify the same thing, from a very early period. *Britt. c.* 18. See *Escata, Eschete*.

The land or fee itself, which thus fell back to the lord. *Spelman*, voc. *Escata*. Such lands were called *excadentia*, or *terra excadentiales*. *Flota*, lib. 6, c. 1. *Co. Litt.* 13 a.

Any profits that fell to the lord on the tenant's death, without heirs. Called by the civilians *caduca*, (q. v.) *Co. Litt.* 13 a.

Escheat is applied, in old records, to material substances that fell to the ground. Thus the *escheat of wood*, signified all the appendages of lop and top, &c. that belonged to a tree *felled* or *cut down*. John de Grey, Bishop of Norwich, gave liberty to the monks of his church, that in his wood of Thorp they should have one tree with the branches, bark, loppings, root, and all the *escheat*, (*tota escata*). *Cowell*. See *Escata*.

ESCHEAT. In American law. The reverting of land to the state, on the death of the owner without lawful heirs.* 4 *Kent's Com.* 423, 424. See *Forfeiture*. See *United States Digest*, *Recheat*.

To **ESCHEAT**. [L. Fr. *eschier*; L. Lat. *cadere, exidere, accidere*, to fall or happen.] To fall back, (Lat. *relabi*); to revert, return or become forfeited to the lord, the crown, or the state; as lands do in certain cases.* See *Escheat*. "When, by accident, lands fall to the lord of whom they are holden,—we say the fee is *escheated*." *Co. Litt.* 13 a. It is a general principle in American law, that when the title to land fails from defect of heirs or devisees, it necessarily reverts or *escheats* to the people, as forming part of the common stock, to which the whole community is entitled. 4 *Kent's Com.* 424.

ESCHEAT, Writ of. [L. Lat. *breve de escata*; L. Fr. *breve d'eschete*.] A writ which anciently lay for a lord, to recover possession of lands that had *escheated* to him. *Reg. Orig.* 164 b. *F. N. B.* 143,

144. *Termes de la Ley*. 2 *Bl. Com.* 245. 3 *Id.* 194. Now abolished. 1 *Steph. Com.* 401, nota.

ESCHEATOR. [L. Lat. *escator*; L. Fr. *eschetor, eschetour*.] An ancient officer, appointed by the lord treasurer in every county in England, to look after the *escheats* which fell due to the king in his particular county. It was his duty to make inquests of titles by *escheats*, by the oaths of good and lawful men of the county impanelled by the sheriff, and to certify their inquisitions into the *exchequer*. *Co. Litt.* 13 b, 92 b. 4 *Inst.* 225. *Reg. Orig.* 247, 252, 254. *F. N. B.* 100, C. D. *Tomlins*. *Crabb's Hist.* 469.

ESCHEATOR, Escheator. In American law. An officer appointed to take charge of *escheated estates*, sometimes termed *escheator general*. *Purdon's (Pa.) Digest*, 316. In Virginia, *escheators* are state officers, appointed for each county. *Code of Virginia*, (ed. 1849,) chap. 113, p. 489. 12 *Grattan's R.* 564. See *Revised Code of Mississippi*, (ed. 1857,) p. 187. 4 *Kent's Com.* 425, nota.

ESCHEKER. L. Fr. *Exchequer*. *Envoies a nostre escheker*; sent to our *exchequer*. *Britt. c.* 26.

ESCHEQUER. L. Fr. *Exchequer*. *Artic. sup. Chart.* c. 4.

ESCHETE. L. Fr. [from *eschier*, q. v.] *Escheat*; an *escheat*. *De eschetes qui nous duissent eschier par la felonie des felons*; of *escheats* which ought to fall to us by the felony of felons. *Britt. c.* 18.

ESCHIER, Eschire, Eshire, Eshuer, Eshure, Eschure, Escheter. L. Fr. To fall or happen; to fall to; to descend; to *escheat*. *Britt. c.* 18. See *Eschete*. *Heritage quo eschire l'our purra*; inheritance which may fall to them. *Britt. c.* 5. *Que eschue*; which happened. *Dyer*, 33.

ESCHUER, Eschure, Eschever. L. Fr. To shun or avoid; to *eschew*. *Kelham*. *Pur eschuer grand delayas*. *Reg. Orig.* 19 b, nota. *Pur eschure la perilouse aventure de batailles*; for avoiding the perilous chance of battle. *Britt. c.* 25.

ESCLAUNDER. L. Fr. False accusation; calumny; slander. *Britt. c.* 22.

ESCLUSE. L. Fr. A sluice. *Kelham*.

ESCOCE. L. Fr. Scotland. *Britt. c.* 16.

ESCOTER. L. Fr. To pay. *Stat. Westm.* 1, c. 18.

ESCOUDIRAD. L. Fr. Let him clear or purge. *LL. Gul. Cong.* l. 16.

ESCRIE. L. Fr. Notorious; pro-

claimed; publicly declared. *Felons ex-cries*; notorious felons. *Stat. Westm.* 1, c. 12.

ESCRIFT, Escrit. L. Fr. Writing; a writing; a written instrument. *Mettre en escript*; to put in writing. *Britt.* fol. 1. *En escript, issint que lescript soit endente*; in writing, so that the writing be indented. *Id.* c. 2. *Par escript de une parte.* *Id.* c. 51. *Soit leur verdict mys en escript*; their verdict shall be put in writing. *Id.* c. 58. *Par titre de escript.* *Id.* c. 66. See *Best on Evid.* 240, § 198, note.

ESCRITURA. Span. [from Lat. *scriptura*, a writing.] In Spanish law. A written instrument. Every deed that is made by the hand of a public *escribano*, or notary of a corporation or council (*concejo*), or sealed with the seal of the king or other authorized persons. *White's New Recop.* b. 3, tit. 7, c. 5.

ESCRITURE. L. Fr. [from Lat. *scriptura*.] Writing; a writing. *Yearb.* M. 4 Hen. VI. 7.

ESCROVET. L. Fr. A scroll. *Litt.* sect. 246. Perhaps this should be *escrovel*. Kelham has *escrover*.

ESCROW, Escrowe, Escrovet. L. Fr. and Eng. A scroll, (scrowl, scrole, escrowl) or writing; (Lat. *scriptum*, *schedula*;) a mere writing, as distinguished from a perfect deed.* *Britt.* c. 71. *Litt.* sect. 246. A deed, (and the term includes a bond,) delivered to a third person to hold or keep, until some act is done or condition performed, and then to be delivered to the grantee or obligee, when it takes effect, and becomes a deed to all intents and purposes.* 2 *Bt. Com.* 307. *Co. Litt.* 36. *Termes de la Ley.* 1 *Steph. Com.* 459, note (k), and cases *ibid.* 4 *Kent's Com.* 454. *Hob.* 246. 5 *Cranch's R.* 351. Until the condition be performed, and the deed delivered over, the estate does not pass, but remains in the grantor. 4 *Kent's Com.* 454. Generally, an *escrow* takes effect from the second delivery, and is to be considered the deed of the party from that time. In cases, however, where it becomes necessary for the purposes of justice, there is a relation back to the first delivery, so as to give the deed effect from that time. *Id. ibid.* *Smith on Contracts*, 10, 11, and note. An instrument cannot be an *escrow*, if delivered to the party himself; the delivery must be to a stranger. 8 *Richardson's R.* 325. 1 *Selden's R.* 229. 2 *Michigan (Gibbs) R.* 390. 14 *Georgia*

R. 145. And see 4 *Florida R.* 374. 11 *M. & W.* 145.

* * *Escrowe* occurs in very nearly its modern form, in the law French of Britton, but in Littleton's time was written *escrovet*, (q. v.); both words being used by these authors, in describing the manner of partitioning an inheritance among co-parceners. Thus, Britton observes, that after partition made, "the parcels should be entered and specified in several scrolls or *escrows*, (*en plusurs escrowes*), and these *escrowes* should be delivered to a layman who knows nothing of letters, and he shall deliver to each parcener an *escrow* (*un escrowe*). And according to the lot of the *escrows*, (that is, according as they happen to be thus distributed,) each parcener shall hold for her share." *Britt.* c. 71. Littleton describes the mode of drawing the lots thus: "After the partition of the lands made, each part of the land shall be written alone by itself, in a little scroll, (*en un petit escrovet*), and shall be covered all over in wax, in the manner of a little ball, (*d'un petit pile*), so that no one can see the scroll, and then the four balls of wax shall be put into a hat to be kept in the hands of an indifferent man," and then the eldest daughter drew first, &c. *Litt.* sect. 246. *Escrowe* seems properly to mean something more than a mere writing, (that being denoted by the Fr. *escript*, which, however, *escrovet* somewhat resembles). The radical idea appears to be, a writing the contents of which are temporarily kept out of view, as by being put in a third hand, by rolling up, enclosing in wax, &c. It will be seen from the foregoing extracts, that the distinctive modern feature of an *escrow*, viz. its being held in the hands of a third person, has belonged to it from the earliest times.

ESCROWL. In old English law. An *escrow*; a scroll. "And deliver the deed to a stranger, as an *escrowl*." *Perk.* ch. 1, s. 9; ch. 2, ss. 137, 138.

ESCU. L. Fr. [from Lat. *scutum*.] A shield or buckler. *Un escu de iiii corners*; a square buckler used in the trial by *battel*. *Britt.* c. 28.

ESCUAGE. L. Fr. [from *escu*, a shield; L. Lat. *scutagium*, q. v.] In old English law. A species of military or knight-service; (service of the shield;) or rather an incident to the tenure by knight-service. *Litt.* sect. 95. *Co. Litt.* 68 b.

A pecuniary payment made as a com-

pensation or commutation for actual service. Otherwise called *scutage*, (q. v.) 2 *Bl. Com.* 74, 80. See Mr. Barrington's derivation of this word. *Obs. Stat.* 342, 343.

ESCUN. L. Fr. Each; every. *Kelham.*

ESEE. L. Fr. Easy. *Meyns esse que devaunt*; less easy than before. *Britt.* c. 54.

Esement; easily. *Id.* c. 61. An easement. *Kelham.*

ESKIPPAMENTUM. L. Lat. In old English law. Tackle or furniture of ships; skippage. *Claus. 1 Edw. I.* cited in *Cowell.*

ESKIPPARE. L. Lat. In old English law. To ship. *Towns. Pl.* 223. *Rast. Entr.* 409.

ESKIPPER, *Eskepper, Escepper.* L. Fr. To ship. *L. Fr. Dict. Kelham.* *Es-kippa*; shipped. *Dyer*, 43 b. *Keilw.* 87.

ESKIPPESON. L. Fr. [from *eskipper*, q. v.] Shipping or passage by sea. *Cowell.*

ESLAUNDER. L. Fr. Slander. *Keilw.* 27 b.

ESLIER. L. Fr. To choose. *Litt. sect.* 58. *Esle*; chosen. *Kelham.*

Eslicus, eslus; chosen. *Stat. Westm.* 1, c. 10. *Britt.* fol. 2. *Id.* c. 1. *Ont es-lew*; have chosen. *Mem. in Scacc. H.* 22 *Edw. I.*

ESLISORS, *Esliors.* [from Fr. *eslier*, q. v.] Electors, or choosers. More commonly written *elisors*, (q. v.)

ESLOIGNER. L. Fr. To remove or eloign, (q. v.)

To put off or adjourn. *Kelham.*

ESNECY. [L. Fr. *aisnesse*; L. Lat. *aisnecia, aisnetia, enitia pars, dignitas primogeniti.*] In old English law. The privilege of the eldest. *Fleta*, lib. 2, c. 66, § 5.

A privilege or prerogative granted to the eldest among co-parceners, to have the first choice after the inheritance was divided. *Fleta*, lib. 5, c. 9, § 13. *Litt. sect.* 244. 245. *Co. Litt.* 166 b.

ESPEALTARE. L. Lat. In old English law. To expedite or disable dogs. *Cowell.* See *Expeditate.*

ESPECHEMENT. L. Fr. Disturbance; impediment. *Kelham.*

ESPERONS. L. Fr. Spurs. *Per les servic' dune pierre des esperons orretz*; by the services of one pair of gold spurs. *Yearb. T.* 1 *Edw. II.* 17. *Esporouns.* *Kelham.*

ESPLEES. L. Fr. and Eng. [L. Fr. *esples, espleits*; L. Lat. *expletia*, from *explere*, to fill up.] In old practice. Profits;

full profits of land. The full profits or products which ground or land yields, as the hay of the meadows, the feed of the pasture, the corn and grain of the arable; the rents, services, and such like issues. *Cowell. Blount. Finch's Law*, b. 4, c. 27. An essential word in writs of right. See *Expletia.*

The lands themselves from which such profits are derived. *Ducange.*

Profits of other subjects than land; as of a gorse or wear. *Yearb. H.* 10 *Edw. III.* 1.

ESPOUSALS. [L. Fr. *esposailles*; Lat. *sponsalia.*] The contract or mutual promise between a man and a woman, to marry each other. *Wood's Inst.* 57.

The ceremony of betrothing.

ESPURIO. Span. [from Lat. *spurius*, q. v.] In Spanish law. A spurious child; one begotten on a woman who has promiscuous intercourse with many men. *White's New Recop.* b. 1, tit. 5, c. 1, § 1.

ESQUIRE, *Esquier.* [L. Fr. *escuier*, from *escu*, a shield; L. Lat. *scutifer, armiger.*] A knight's attendant, who waited on him in time of war, and bore his shield, or armor. *Spelman, voc. Armiger.*

A name or title of dignity in English law, next above gentleman, and below knight. Also, a title of office given to sheriffs, serjeants and barristers at law, justices of the peace, and others. 1 *Bl. Com.* 406. 3 *Chitt. Bl. Com.* 28, note. 3 *Steph. Com.* 15, note. *Tomlins.* Esquires are first mentioned in the statutes 1 Ric. II. st. 2, c. 7, and 16 Ric. II. c. 4. 3 *Reeves' Hist. Eng. Law*, 172. See *Armiger.*

ESSART. [L. Lat. *essartum, esartum, exartum.*] Woodland turned into tillage, by uprooting the trees, and removing the underwood. *Spelman, voc. Essartum.* Commonly written *assart*, (q. v.)

ESSARTER. L. Fr. To cut down woods, to clear land of trees and underwood; properly to thin woods, by cutting trees, &c. at intervals. *Spelman, voc. Esartum.*

ESSARTUM. L. Lat. In old English law. *Essart* or *assart.* *Cart. de For.* 9 Hen. III. c. 4. See *Assartum.*

ESSE. Lat. [infinitive of *sum*, I am.] To be; being. Although a verb, this word is often used in law Latin as a substantive, and governed by a preposition; as in the phrases *ad esse, de esse, in esse, &c.* See *De bene esse, In esse.*

To appear in court. *Quod ait coram*

nobis; that he be before us. A word constantly used in the old writs. *Fleta*, lib. 2, c. 65, § 12.

ESSENDUM, ESSENDI. L. Lat. Being; of being. A barbarous gerund formed from the verb *sum*, *esse*, to be. See *infra*.

ESSENDI, (or DE ESSENDO), QUI ETUM DE THEOLONIO, *Breve*. L. Lat. In old English law. A writ of being quit of toll. A writ which anciently lay for citizens and burgesses of a city or town, which, by charter or prescription, was entitled to exemption from toll, where toll was exacted of them. *Reg. Orig.* 258 b. *F. N. B.* 226, I.

ESSOIN, *Essoign*. [L. Fr. *essoine*, *essoine*, *exoine*, *asoigne*, *assoigne*, *assoigne*; L. Lat. *essonium*, *exonium*, from Fr. *essonier*, (which from *ex*, priv. and *soign*, care,) to excuse, to relieve from care; or from Gr. *ἐξουνοῦναι*, to excuse on oath; from *ἐξ*, from, and *ονομεῖν*, to swear.] *Spelman*.] In English practice. An excuse for not appearing in court, at the return of process; the exhibition or presentation of such excuse to the court; (*ipsa excusatio, ejusdemque exhibitio*.) *Spelman*, voc. *Essoniere*. *Britt.* c. 122. *Roscoe's Real Act.* 166. Formerly allowed both to the plaintiff and defendant, (though generally the latter,) in real, personal and mixed actions. *Co. Litt.* 131. *Com. Dig.* Exoine, B. I. *Boote's Suit at Law*, 56, 57. *Gilb. C. Pleas*, 12, 13.

* * The excuses or essoins which were allowed to be offered were five, viz.: that the party was (1) in the king's service, (Lat. *in servitio regis*; Fr. *en service del roy*; called simply *servitium regis*;) (2) in the holy land; (Lat. *in terra sancta*, or *in terram sanctam*; called simply *terra sancta*: Fr. *a la terre seynte*;) (3) beyond sea, (Lat. *trans* or *ultra mare*, Fr. *oultre meer*, or *ouster le mer*;) (4) ill in bed; (called *malum lecti*; Fr. *mal de lyt*; illness in bed;) and (5) prevented by misfortune happening on the way to the court, (called *malum viæ*; Fr. *mal de venue*;) which last was the common essoin. Hence the technical names of the essoins; (1) *De servitio regis*, or *de service del roy*; (2) *De terra sancta*, or *de terre seynte*; (3) *De ultra mare*, or *de oultre meer*; (4) *De malo lecti*, or *de mal de lyt*; and (5) *De malo veniendi*, or *de mal de venue*, (qq. v.) *Glanv.* lib. 1. *Bract.* lib. 5, tr. 2. *Britt.* cc. 122—125. 1 *Reeves' Hist.* 405, *et seq.* 2 *Id.* 122, 303. All these, except the last, have long been obsolete, and no

essoins is now allowed in personal actions. *Roscoe's Real Act.* 163. 2 *Term R.* 16. 16 *East's R.* 7 note (a). In real actions, essoins are still allowed in England. 3 *Steph. Com.* 659. See 10 *Bing.* 65.

To ESSOIN. [L. Fr. *essoigner*, *essonier*; L. Lat. *essoniare*.] In English practice. To present or offer an excuse for not appearing in court on an appointed day, in obedience to a summons; to cast an essoin. *Spelman*, voc. *Essoniare*. This was anciently done by a person whom the party sent for that purpose, called an essoiner, (*essoniator*); and who, according to Bracton, presented the excuse in this form: *Essonio talem dominum meum, quod cum esset in veniendo versus curiam, talis infirmitas accedit ei per viam, quod venire non potest lucrari, nec pro perdere; et hoc paratus sum docere, sicut curia consideraverit, &c.* I essoin such a one, my master, that while he was coming towards the court, such an infirmity happened to him by the way, that he cannot come, either to gain or lose; and this I am ready to show, or prove, as the court shall consider, &c. *Bract.* fol. 340.

ESSOIN DAY. In English practice. Formerly the first general return day of the term, on which the courts sat to receive essoins, i. e. excuses for parties who did not appear in court, according to the summons of writs. 3 *Bl. Com.* 278. *Boote's Suit at Law*, 57. *Gilb. C. Pleas*, 13. 1 *Tidd's Pr.* 107. But, by statutes 11 Geo. IV. and 1 Will. IV. c. 70, § 6, these days were done away with, as a part of the term. *Tomlins. Wharton's Lex.*

ESSOIN ROLL. In English practice. A roll upon which essoins were formerly entered, together with the day to which they were adjourned. *Boote's Suit at Law*, 57. *Roscoe's Real Act.* 162, 163. *Gilb. C. Pleas*, 13. *Co. Entr.* 266 a.

ESSONEOUR. L. Fr. An essoiner; an excuser, (*excusour*). *Britt.* c. 122.

ESSONIABILIS. L. Lat. In old English law. Essoinable; excusable. *Fleta*, lib. 4, c. 5, § 4.

ESSONIARE. L. Lat. In old English practice. To essoin; to present an excuse or essoin to a court. *Spelman. Bract.* fol. 340, *et seq.*

Essoniator; an essoiner; a person sent to essoin another, or present an excuse for him; an excuser, (*excusator*). *Bract.* fol. 337 b. *Fleta*, lib. 6, c. 7, § 11. 1 *Reeves' Hist.* 116, 118. But see *Excusator*.

Essoiniatus; a person essoined, or for whom an essoin was presented. *Glanv.* lib. 1, c. 25. *Bract.* fol. 343 b.

ESSONIO. L. Lat. (I essoin.) In old English practice. The commencement of the old formula of essoining. *Bract.* fol. 343 b. See *To essoin*.

ESSONIUM, *Exonium*, *Ezonia*, *Sonium*. L. Lat. In old English law and practice. An essoin; an excuse for not appearing in court. *Spelman.* *Bract.* lib. 6, tract. 2, *De Essoiniis.* *Fleta*, lib. 6, cc. 8, 9, 10. 2 *Inst.* 125. See *Essoin*.

An excuse or reason, in general. *Spelman*.

EST. Lat. [from *sum*, *esse*, to be.] Is; it is; there is. *Est aliquid quod non oportet, etiam si licet; quicquid vero non licet certe non oportet*; there is something [are some things] which ought not to be done, even though it be lawful; but whatever is not lawful certainly ought not to be done. *Hob.* 159.

Est, in the civil law, was sometimes used to signify the past. *Dig.* 50. 16. 123.

Est ipsorum legulatorum tanquam viva vox; rebus et non verbis legem imponimus. [The voice, utterance or declaration] of legislators themselves is like the living voice, [the spoken word of an individual]; we impose law upon things, not upon words. 10 *Co.* 101 b. Statutes are to be interpreted, like ordinary language, with reference rather to substantial effect than mere verbal nicety.

EST. L. Fr. [from *estre*, to be.] Is; it is; there is. *Britt. passim*.

EST. L. Fr. East; the east. *Kelham*.

EST ASCAVOIR. L. Fr. [Lat. *sciendum est*.] It is to be understood or known; "it is to wit." *Litt.* sect. 9, 45, 46, 57, 59. A very common expression in Littleton, especially at the commencement of a section; and according to Lord Coke, "it ever teacheth us some rule of law, or general or sure leading point." *Co. Litt.* 16. It seems to be directly derived from the *sciendum est* (q. v.) of the civil law.

ESTABLIR. L. Fr. [Lat. *constituere*.] In old English law. To establish or ordain as a law. *Establie est*; it is ordained. *Stat. Gloc.* c. 7.

To fix or settle, as dower. *Estably*; fixed or settled. *Britt.* c. 102.

ESTABLISHMENT. [L. Fr. *etablissement*; L. Lat. *constitutio*.] In old English law. An ordinance or statute; an established law. A term particularly applied to

the statutes passed in the reign of Edward I. These, according to Sir Edward Coke, truly deserve the name of *establishments*, because they were more constant, standing and durable laws than any made since. 2 *Inst.* 156.

ESTABLISSEMENT. L. Fr. [from *establi*, q. v.; L. Lat. *constitutio*.] In old English law. An establishment or ordinance; an act or statute. *Ceux sont les etablissements le Roy Edward*; these are the establishments (acts or ordinances) of King Edward. *Stat. Westm.* 1, pr. *L'establissement de nostre estatute.* *Britt.* c. 21.

The settlement of dower on a woman by her husband. *Britt.* c. 102, *De etablissements de dower*.

ESTAGNE, *Etaignee*. L. Fr. [Lat. *stagnum*.] A pool. *Yearb.* P. 8 Edw. III. 9.

ESTANDARD. L. Fr. A standard (of weights and measures). So called, because it stands constant and immovable, and hath all other measures coming towards it for their conformity. *Termes de la Ley.* *Estandars*; *standards.* *Britt.* fol. 2. *Id.* c. 30.

ESTAPE. L. Fr. Staple. *Yearb.* M. 12 Hen. VI. 9.

ESTAT. L. Fr. Estate; condition; statute. *Kelham*.

ESTATE. L. Fr. and Eng. [L. Fr. *estat*; from Lat. *status*, state or condition, from *stare*, to stand.] The interest which any one has in lands, or in any other subject of property. 1 *Preston on Estates*, 20. Called the natural and primary signification of the word. 2 *P. Wms.* 524. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 *Bl. Com.* 108.—The condition or circumstance in which the owner stands with regard to his property. *Id.* *ibid.* 2 *Crabb's Real Prop.* 2, § 942. In this sense, *estate* is constantly used in conveyances, in connection with the words *right*, *title* and *interest*, (qq. v.) and is, in a great degree, synonymous with all of them. See *Co. Litt.* 345.

The property itself, in which one has an interest; technically called the *corpus*. Thus, lands are real estate; goods and chattels are personal estate. See *Real estate*, *Personal estate*. The word is also frequently, though untechnically, used as a term of local description, as "my estate at A." 1 *Chitt. Gen. Pr.* 298.

* * The old definitions of this word generally confine it to lands or realty. Thus, according to Lord Coke, "*state* or *estate* signifieth such inheritance, freehold, term for years, &c., as any man hath in *lands* or *tenements*." *Co. Litt.* 345 a. So Cowell defines it to be "that title or interest which a man hath in *lands* or *tenements*," and the same definition is given in the *Termes de la Ley*. And this limited sense of the word has been relied on, in argument, in some cases. See 1 *P. Wms.* 2. But, according to the settled modern doctrine, the term *estate* is of much more extensive import and application, being indeed *genus generalissimum*, and clearly comprehending things personal as well as real; personal as well as real estate. Holt, C. J. 1 *Salk.* 237. Kent, C. 16 *Johns. R.* 587. *Ward on Legacies*, 208. Marshall, C. J. 1 *Peters' R.* 588, 588. Paterson, J. 3 *Cranch's R.* 97. Wayne, J. 11 *Howard's R.* 358. Dewey, J. 4 *Metcalf's R.* 178, 180. Hence it is well remarked, that, in general, whenever legal enactments are intended to apply exclusively to one or the other of these different species of property, the statutes use the proper qualifying words, "personal" or "real estate," as the case may require. Dewey, J. *ub. sup.*

In wills, the import of the term *estate* depends in a great degree upon its association with other expressions. 2 *Powell on Dev.* (by Jarman,) 158, chap. x. Marshall, C. J. 1 *Peters' R.* 585, 588. Thus, in a recent case in England, it was held that the word *estate* in a will did not, of necessity, include *real* property, but its meaning must be taken as explained by the context. Accordingly, where a testator, after devising certain real estates by his will, proceeded, "I give all the rest of my household furniture, books, linen and china, except as hereinafter mentioned, goods, chattels, *estate* and effects of whatever nature or kind soever, and wheresoever the same shall be at the time of my death," unto certain executors in trust to dispose of the same as specified by the will, it was held that the word "*estate*" did not pass real estate. 1 *Welsby, H. & Gordon*, 141. See 1 *Jarman on Wills*, 658, (566, Perkins' ed. notes). But, subject to qualification and restriction, the term *estate* is the most general, significant and operative word that can be used in a will, and, according to all the cases, may embrace every degree

and species of interest. Paterson, J. 3 *Cranch's R.* 97. If used as descriptive of land, it will carry every thing, both the land and the interest in it, unless it be restrained by particular expressions. *Id. ibid.* It will carry the inheritance, though it be accompanied by words descriptive of local position, or other expressions referable exclusively to the *corpus* of the land. 2 *Powell on Dev.* (by Jarman,) 411, 412, and cases cited *ibid.* 1 *Hilliard's Real Prop.* 614. Marshall, C. J. 1 *Peters' R.* 588. Kent, C. 16 *Johns. R.* 587. Bennett, J. 26 *Vermont R.* 260, 267. 2 *Jarman on Wills*, 181, (182, Perkins' ed. notes), *et seq.*

ESTATE OF INHERITANCE. A species of freehold estate in lands, otherwise called a *fee*, where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him in *perpetuum*, in right of blood, according to a certain established order of descent. 1 *Steph. Com.* 218. *Litt.* sect. 1. *Co. Litt.* 237 b. 1 *N. Y. Rev. Stat.* [722], 717, § 2.

ESTATE IN FEE SIMPLE. An estate to a man and his heirs forever. *Hale's Anal.* sect. xxx. A species of estate of inheritance which a man has, to hold to him and his heirs general, that is, his heirs whether lineal or collateral, male or female; and which is often called an *estate in fee*, without the addition of the word *simple*. 1 *Steph. Com.* 220. 2 *Crabb's Real Prop.* 6.—The entire and absolute interest and property in land. *Cruise's Dig.* tit. i. sect. 44. See *Fee, Fee simple*.

ESTATE IN FEE TAIL, generally termed an ESTATE TAIL. An estate of inheritance which a man has, to hold to him and the heirs of his body, or to him and particular heirs of his body. 1 *Steph. Com.* 228.—An estate of inheritance by force of the statute *De Donis*, limited and restrained to some particular heirs of the donee, in exclusion of others. 2 *Crabb's Real Prop.* 22, 23, § 971. *Cruise's Dig.* tit. ii. ch. 1, sect. 12. See *Tail, Fee tail*.

ESTATE FOR LIFE. A freehold estate, not of inheritance, which a man has, to hold for the term of his own life, or for that of any other person, or for more lives than one.* 1 *Steph. Com.* 239.—A freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain

event. *Cruise's Dig.* tit. iii. ch. 1, sect. 1. 1 *Hilliard's Real Prop.* 99.—That interest in lands which may possibly last for a life, but cannot last longer. 2 *Crabb's Real Prop.* 59, § 1020. When it is an estate for a man's own life, it is called absolutely an *estate for life*, but when it is for another's life, it is called an *estate pur autre vie*. *Id.* *Litt.* sect. 56. See 4 *Kent's Com.* 23, 24.

ESTATE BY THE CURTESY. A species of life estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seised in fee during the marriage, provided he had issue by her, born alive, and capable of inheriting her estate.* 1 *Steph. Com.* 246. 2 *Bl. Com.* 126. *Cruise's Dig.* tit. v. 2 *Crabb's Real Prop.* 97, § 1074. 1 *Hilliard's Real Prop.* 110. See 4 *Kent's Com.* 27. See *Curtesy*.

ESTATE IN DOWER. A species of life estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. 1 *Steph. Com.* 249. 2 *Bl. Com.* 129. *Cruise's Dig.* tit. vi. 2 *Crabb's Real Prop.* 124, § 1117. 4 *Kent's Com.* 35. See *Dower*.

In several of the United States, (Vermont, Connecticut, Tennessee, North Carolina, and Georgia,) the title to dower has been reduced down to the lands whereof the husband died seised. 4 *Kent's Com.* 41. 1 *Greenleaf's Cruise's Dig.* 164, note. 1 *Hilliard's Real Prop.* 122. In England, by the late Dower Act, 3 & 4 Will. IV. c. 105, seisin of the husband is not necessary. 2 *Crabb's Real Prop.* 130.

ESTATE PUR AUTRE VIE. Estate for another's life. An estate in lands which a man holds for the life of another person. 2 *Bl. Com.* 120. *Litt.* sect. 56.

ESTATE FOR YEARS. A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certain number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 *Steph. Com.* 263, 264. Blackstone calls this estate a *contract* for the possession of lands or tenements for some determinate period. 2 *Bl. Com.* 140. See 2 *Crabb's*

Real Prop. 224, § 1267. 1 *Hilliard's Real Prop.* 198. 4 *Kent's Com.* 85. It is frequently called a *term*, (*terminus*), because its duration or continuance is bounded, limited and determined. 2 *Bl. Com.* 143.

ESTATE AT WILL. A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant, by force of this lease, obtains possession. 2 *Bl. Com.* 145. 4 *Kent's Com.* 110. *Litt.* sect. 68. Or it is where lands are let without limiting any certain and determinate estate. *Id.* 2 *Crabb's Real Prop.* 403, § 1543. *Cruise's Dig.* tit. ix. ch. 1.

ESTATE AT (or BY) SUFFERANCE, is where one comes into possession of land under a lawful demise, and after his estate is ended, wrongfully continues the possession. 1 *Steph. Com.* 273. *Co. Litt.* 57 b. 2 *Bl. Com.* 150. *Cruise's Dig.* tit. ix. ch. 2. 2 *Crabb's Real Prop.* 437, § 1597. See 4 *Kent's Com.* 116.

ESTATE UPON CONDITION. An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 *Bl. Com.* 151. 1 *Steph. Com.* 276. *Co. Litt.* 201 a. *Litt.* sect. 323, 325. *Cruise's Dig.* tit. xiii.—An estate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged or destroyed. 4 *Kent's Com.* 121.

ESTATE UPON CONDITION IMPLIED, (or CONDITION IN LAW). An estate having a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. 2 *Bl. Com.* 152. 4 *Kent's Com.* 121. See *Condition implied*.

ESTATE UPON CONDITION EXPRESSED. An estate granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification, or condition. 2 *Bl. Com.* 154. See *Condition expressed*.

An estate which is so expressly defined and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens, upon which the estate is to fail. 1 *Steph. Com.* 278.

ESTATE IN VADIO. An estate in gage, or pledge. 2 *Bl. Com.* 157. 1 *Steph. Com.* 282. See *Mortgage*.

ESTATE BY STATUTE MERCHANT. See *Statute merchant*.

ESTATE BY ELEGIT. See *Elegit*.

ESTATE IN POSSESSION. An estate whereby a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance, or contingency. 2 *Bl. Com.* 163. An estate where the tenant is in actual pernaney, or receipt of the rents and other advantages arising therefrom. *Id. ibid.* 2 *Crabb's Real Prop.* 958, § 2322. *Cruise's Dig.* tit. xvi. ch. 1, sect. 1. Where a man is entitled immediately to the possession of land, his estate is said to be in possession; when entitled to it, not immediately but *in futuro*, his estate is said to be in expectancy. 1 *Steph. Com.* 289. 1 *N. Y. Rev. St.* [723], 718, § 8.

ESTATE IN EXPECTANCY. An estate where the right to the pernaney of the profits is postponed to some future period. *Cruise's Dig.* tit. xvi. chap. 1, sect. 1.

ESTATE IN REVERSION. A species of estate in expectancy, created by operation of law, being the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 *Bl. Com.* 175. 2 *Crabb's Real Prop.* 978, § 2345.—The residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. 1 *N. Y. Rev. St.* [723], 718, § 12.—An estate in reversion is where any estate is derived, by grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived; the latter interest being called the *particular estate*, (as being only a small part or *particula* of the original one,) and the ulterior interest, the *reversion*. 1 *Steph. Com.* 290. See *Reversion*.

ESTATE IN REMAINDER. An estate limited to take effect, and be enjoyed, after another estate is determined. 2 *Bl. Com.* 163. *Cruise's Dig.* tit. xvi. ch. 1, sect. 2. 2 *Crabb's Real Prop.* 959, § 2323. An estate in remainder is where any estate is derived by grant out of a larger one, an ulterior estate immediately expectant on that which is so derived being, at the same time, granted away by the original owner. The latter interest is called the particular

estate, and the ulterior one, the remainder. 1 *Steph. Com.* 295. See *Remainder*.

ESTATE IN SEVERALTY. An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 *Bl. Com.* 179. *Cruise's Dig.* tit. xviii. ch. 1, sect. 1.

ESTATE IN JOINT TENANCY. An estate in lands or tenements granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 *Bl. Com.* 180. 2 *Crabb's Real Prop.* 937. *Cruise's Dig.* tit. xviii. ch. 1, sect. 2.—An estate acquired by two or more persons in the same land, by the same title, (not being a title by descent,) and at the same period; and without any limitation by words importing that they are to take in distinct shares. 1 *Steph. Com.* 312. The most remarkable incident or consequence of this kind of estate is, that it is subject to survivorship. *Id.* 315. See *Survivorship*. It is an estate not favored in law. 2 *Chitty's Bl. Com.* 180, note. See 4 *Kent's Com.* 357. 2 *Greenl. Cruise's Dig.* 352, note. In New-York, every estate, granted or devised to two or more persons in their own right, has been declared to be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in executors or trustees, as such, shall be held by them in joint tenancy. 1 *N. Y. Rev. St.* [727], 721, § 44. See *Joint tenancy*.

ESTATE IN COPARCENARY. An estate acquired by two or more persons, (usually females,) by descent from the same ancestor.* 2 *Bl. Com.* 187. 1 *Steph. Com.* 319. *Cruise's Dig.* tit. xix. See *Coparcenary*. See 4 *Kent's Com.* 366. 2 *Greenleaf's Cruise's Dig.* 382, notes.

ESTATE IN COMMON. An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 *Steph. Com.* 323. See *Tenancy in common*. See *Cruise's Dig.* tit. xx. 2 *Greenleaf's Cruise's Dig.* 390, *et seq.* notes.

"ESTATES," held to carry a fee. 4 *M. & S.* 366. Estates may mean as well the interest in the lands, as the lands themselves. Le Blanc, *J. Id.* 370.

ESTATES OF THE REALM. In Eng-

lish law. The lords spiritual, the lords temporal, and the commons of Great Britain. 1 *Bl. Com.* 153. 2 *Steph. Com.* 356.

ESTATUTE, *Estatut*. L. Fr. Statute; a statute. *Yearb.* P. 8 Edw. III. 2, 25. *Soloneqz les estatutes de Wyncester*; according to the statutes of Winchester. *Britt.* c. 12. *En nos estatutz de Westminster.* *Id.* c. 14.

ESTAUNKE. L. Fr. A pool or wear; a stank. *Britt.* c. 54. *Id.* c. 61.

ESTE, *Estee*. L. Fr. [from Lat. *estas*.] Summer. *Kelham*.

ESTE. L. Fr. [from *ester*, to be.] Been. *Avera este tus*; shall have been slain. *Britt.* c. 23.

ESTEANT. L. Fr. [from *estre*, q. v.] Being. *Dyer*, 14, (Fr. ed.)

ESTENDRE. L. Fr. To extend, or lay out. *Britt.* c. 71. See *Extend*. *Estendu*; extended. *Id.* c. 53.

Estendour; an extender. *Id.* c. 71.

ESTENTE, *Estant*, *Esteinte*. L. Fr. Extent; the laying out of lands. *Britt.* c. 71. Value; estimation. *Kelham*.

ESTER, *Estre*, *Estoier*. L. Fr. To stand; to be. *De ester a droit*; to stand to the right; to meet an accusation, (*de stando ad rectum*). *Britt.* c. 27. See *Ad standum recto*. *Estoite*; was. *Kelham*. *Estoyent*; were. *Id.*

ESTERLING, *Sterling*. [L. Lat. *esterlingus*, *sterlingus*.] The silver penny of England, (*denarius argenteus*). *Spelman*, voc. *Esterlingus*. See *Denarius*.

Good money, (*moneta proba*), as distinguished from bad (*reproba*). *Spelman*.

Lawful money in general. *Id.*

Standard silver money. *Argent del allay del esterling.* *Artic. sup. Chart.* c. 20.

According to *Spelman* and *Dufresne*, this word was derived from the *Esterlingi*, or *Easterlings*, (people from the *East*), as those Saxons are anciently called who inhabited that district of Germany afterwards occupied by the Hanse Towns and their appendages, and by whom the arts of assaying and coining silver are said to have been introduced into England. 1 *Bl. Com.* 278, note. See 2 *How. St. Trials*, 122, 123. Lord Coke observes that the esterling or sterling penny took the name of the workmen, being Esterlings, that both coined it and gave it the allay. 2 *Inst.* 575.

ESTEYME, *Estainte*, *Estagne*, *Estantk*, *Estonbz*, *Esteigne*. L. Fr. Tin. *Kelham*.

ESTO. Lat. [imper. of *sum*, *esse*, to be.] Be it; suppose; suppose it to be. A word used by old English writers, in putting their cases. *Fleta*, lib. 3, c. 9, § 24; c. 10, § 1.

ESTOFFER. L. Fr. To store; to stock; to furnish. *Kelham*.

ESTOP. [L. Fr. *estopper*; L. Lat. *op-pilare*, *obstare*, *obstipare*.] To stop, bar, or impede; to prevent, to preclude. *Co. Litt.* 352 a. See *Estoppel*.

To stop or obstruct. "Estopping a river." 3 *Leon*. 174.

ESTOPPEL. [from *estop*; L. Lat. *op-pilare*.] An impediment, or bar, by which a man is precluded in law from alleging or denying a fact, in consequence of his own previous act, allegation or denial, to the contrary.* *Steph. Pl.* 196, 197.—An estoppel is where a man has done some act, or executed some deed, which *estops* or precludes him from averring any thing to the contrary. 3 *Bl. Com.* 308.—It is called an estoppel, says Lord Coke, "because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth." *Co. Litt.* 352 a. 2 *Crabb's Real Prop.* 1046, § 2432. This is called by Mr. Smith, "a startling," and by Mr. Best, "an unlucky" definition; the last named writer observing that "one would imagine, from the language of Sir E. Coke, that truth was the enemy which the law of estoppel was invented to exclude." 2 *Smith's Lead. Cas.* 436. *Best on Evid.* 403, § 362. The definition given in the *Termes de la Ley* is less objectionable; "Estoppel is where one is concluded and forbidden to speak against his own act or deed, yea, though it be to say the truth." And see, as to the doctrine of estoppels, and the reason of it, 4 *Kent's Com.* 261, and note.

ESTOPPEL BY MATTER OF RECORD. An estoppel founded upon matter of record; as a confession or admission made in pleading in a court of record, which precludes the party from afterwards contesting the same fact in the same suit. *Steph. Pl.* 197. As to this kind of estoppel, and the doctrine of the conclusive effect of a record, see 2 *Smith's Lead. Cas.* 437—445, and American ed. note. Lord Coke classes letters patent, fines and recoveries among matters of record which estop a party. *Co. Litt.* 352 a.

The effect of a judgment, as *res judicata*. The decision of a question by a competent

tribunal, as precluding the same question from being again raised between the same parties. See *Res judicata*.

ESTOPPEL BY DEED is where a party has executed a deed, that is, a writing under seal (as a bond) reciting a certain fact, and is thereby precluded from afterwards denying, in any action brought upon that instrument, the fact so recited. *Steph. Pl.* 197. A man shall always be estopped by his own deed, or not permitted to aver or prove any thing in contradiction to what he has once so solemnly and deliberately avowed. 2 *Bl. Com.* 295. *Plowd.* 434. *Coup.* 601. 2 *Crabb's Real Prop.* 1046, § 2432. 2 *Smith's Lead. Cas.* 456, 457. 4 *Kent's Com.* 261, and note. A writing which is not technically a deed, that is, which is not under seal, does not operate as an estoppel. A good example of this is the case of a receipt. *Smith on Contracts*, 16. *Bronson, J.* (dissenting), 3 *Hill's (N. Y.) R.* 215, 220.

ESTOPPEL BY MATTER IN PAIS, (or *in the country*). An estoppel by matter that is neither a record, nor a deed,* such as livery, entry, acceptance of rent, &c. *Co. Litt.* 352 a. Thus, where one man has accepted rent of another, he will be estopped from afterwards denying, in any action with that person, that he was, at the time of such acceptance, his tenant. *Steph. Pl.* 197. *Com. Dig.* Estoppel. *Co. Litt.* 352 a. 2 *Smith's Lead. Cas.* 458. See 3 *Hill's (N. Y.) R.* 215. *Bronson, J. Id.* 220. 4 *Mann. & Gr.* 209. 22 *Alabama R.* 543. Admissions belong to this division of estoppels. See 8 *Wendell's R.* 480, 483.

The doctrine of *estoppels in pais* is one which, so far at least as that term is concerned, has grown up chiefly within the last few years. But it is, and always was a familiar principle in the law of contracts. It lies at the foundation of morals, and is a cardinal point in the exposition of promises, that one shall be bound by the state of facts which he has induced another to act upon. *Redfield, C. J.* 26 *Vermont R.* 366, 373. And see 2 *Welsby, H. & Gordon*, 653.

ESTOPPEL, COLLATERAL. The collateral determination of a question by a court having general jurisdiction of the subject. See *Small v. Haskins*, 26 *Vermont R.* 209, 221. The whole subject of collateral estoppels is one of comparatively recent origin. And it is exclusively of the creation of the courts, and, like fictions of law,

ought not to be allowed to aid in the perpetration of wrong. *Redfield, C. J. Id.* 223.

ESTOPPEL. In pleading. A plea, replication or other pleading, which, without confessing or denying the matter of fact adversely alleged, relies merely on some matter of estoppel as a ground for excluding the opposite party from the allegation of the fact. *Steph. Pl.* 219. 3 *Bl. Com.* 308.

ESTOPPER, Estoper. L. Fr. To stop, or obstruct, as by damming up a stream. *De evis estoppes*; of water-courses stopped. *Britt. c.* 29.

ESTOVER. L. Fr. and Eng. [L. Lat. *estoverium*.] An allowance made to a person. See *Estoverium*. The plural only (*estovers*;) is now used. See *Estovers*.

ESTOVER. L. Fr. To furnish, or supply. *Britt. c.* 103.

To be necessary. *Id. c.* 75.

ESTOVERIUM. L. Lat. In old English law. An estover; an allowance made to a person out of an estate, or other thing, for his or her support. An allowance of wood (*in boscis*) made to a tenant in dower for repairs, (*ad edificandum*), fuel, (*ardendum*), and fencing, (*claudendum*). *Bract. fol.* 315. See *Magna Charta*, c. 7.

An allowance of wood to a commoner, for similar purposes. *Bract. fol.* 222 b, 231. *Fleta*, lib. 4, c. 25.

An allowance made to a man arrested for felony, for the support of himself and family during his imprisonment. *Bract. fol.* 136 b, 137. *Fleta*, lib. 1, c. 26, § 2.

An allowance of forage to horses. *Fleta*, lib. 2, c. 73, § 3.

The plural *estoveria* is used by more modern writers. *Estoveria edificandi, arandi, arandi et claudendi*; estovers of building, (house-bote,) burning, (fire-bote,) ploughing, (plough-bote,) and enclosing, (hedge-bote). *Co. Litt.* 41 b. See *Stat. Westm.* 2, c. 25.

ESTOVERS. L. Fr. and Eng. [L. Lat. *estoveria*, and more anciently *estoverium*; from Fr. *estover*, *estover* or *estoffer*, to furnish, supply or maintain.] An allowance made to a person out of an estate, or other thing for his or her support, as for food and raiment, (*in victu et vestitu*). *Stat. Gloc.* c. 4. See *Estover, Estoverium*. An allowance (more commonly called *alimony*;) granted to a woman divorced *a mensa et thoro*, for her support out of her husband's estate. 1 *Bl. Com.* 441.

An allowance of wood made to a tenant for life or years; a liberty of taking necessary wood for the use or furniture of his house or farm, from off the land demised to him. 2 *Bl. Com.* 35. 1 *Steph. Com.* 241, 269. 2 *Crabb's Real Prop.* 76, § 1044. *Bisset on Estates*, 276, 277. 4 *Kent's Com.* 73. This is the ordinary meaning of the word *estovers*, which are also called in law *botes*, embracing the various kinds of *house-bote*, *fire-bote*, *plough-bote*, and *hay-bote*. See *Botes*. Estovers are sometimes erroneously confounded with *common of estovers*, (q. v.) and the distinction is not clearly made by Britton in his 60th chapter, *De renables estovers*.

ESTOYER, *Estoir*, *Estere*, *Ester*. L. Fr. [from Lat. *stare*.] To stand; to stand good; to stand to, or abide. *Kelham*. *Estoyse le primer jugement*; the first judgment shall stand. *Britt.* c. 105.

ESTRAUNGE, *Estrange*. L. Fr. A stranger. *Britt.* c. 12. *Yearb.* P. 4 Edw. III. 15.

ESTRAY. [L. Fr. *estraye*, *estrayeur*; L. Lat. *extrahura*, from *extra*, without.] Any thing out of its place, especially an animal that has escaped from its owner, and wanders or strays about; a wandering animal, (*animal palans*). *Spelman*, voc. *Extrahura*. Usually defined as a wandering animal whose owner is unknown. *Pecus quod, elapsum à custode, campos pererrat, ignoto domino*; a beast which, having escaped from its keeper, wanders over the fields, its owner being unknown. *Spelman*, ub. sup. *Pecus vagans, quod nullus petit, sequitur vel advocat*; a wandering beast, which no one seeks, follows or claims. *Fleta*, lib. 1, c. 43. *Bract.* fol. 120.—Cattle whose owner is unknown. 2 *Kent's Com.* 359. See *United States Digest*, *Estray*.

In a late case in the Supreme Court of Texas, in which the signification of this term came under consideration, Hemphill, C. J. was of opinion that it did not necessarily, and in all cases, import an animal whose owner was *unknown*; but that, as used in the statute of that state relating to estrays, it was intended to have a wider range, so as to include animals whose owners were known. See 14 *Texas R.* 428, 430, 431.

In English law, an *estray* is any valuable animal, [whether beast or bird,] that is not wild, found within a lordship, and whose owner is not known; and which belongs to the king, or to the lord of the manor by

special grant from the crown.* 1 *Bl. Com.* 297, 298. 2 *Id.* 14. 2 *Steph. Com.* 561, 562. 1 *Crabb's Real Prop.* 513—518, §§ 665—671.

ESTRE. *Estr'*. L. Fr. To be; being. *Del bien estre*; of well being. *Britt.* c. 39. *Esteant*; being. *Este*; been. *Estois*; was. *Id. passim*. L. Fr. *Dict.*

ESTREAT. [L. Fr. *estrete*; L. Lat. *extractum*.] In practice. A true copy or duplicate of an original writing. *Cowell*.

An extract from the rolls or records of a court, especially records of amercements.*

A forfeited recognizance taken out, (*estreated*, i. e. *extracted*) from among the other records of the courts, and sent or returned to the court of exchequer to be prosecuted. 4 *Bl. Com.* 253. This last is the modern meaning.

Anciently, in the English Court of Common Pleas, after the amercements had been entered on record, which was done without assessing any sum, the clerk of the warrants made the *estreats*, (that is, *extracts* or copies from the record,) and delivered them to the clerks of the assize, by whom they were delivered to the coroners to affeer the amercements. See *Affeer*. After the coroners had affeered or assessed the amercements, they were delivered back through the same channel to the clerk of the warrants, and then the rolls of the *estreats*, thus completed, were carried into the exchequer. *F. N. B.* 75, I. K. 76. Fitzherbert explains these proceedings in detail, and gives a form of the *estreat*. *Id. ibid.* See *Stat.* 3 & 4 *Will.* IV. c. 99.

To ESTREAT. [L. Lat. *extrahere*.] To take out a forfeited recognizance from the records of a court, and return it to the court of exchequer, to be prosecuted. See *Estreat*.

To bring or draw into the exchequer. "It is hard to *estreat* the fine hither, without taking the usual remedy for it by distress." Hale, C. B. *Hardr.* 471.

ESTREITE, *Estreyte*. L. Fr. [from Lat. *strictus*.] Straited; contracted; narrowed. *De ewes estoppes ou estreites*; of water-courses stopped or narrowed. *Britt.* c. 29.

Strict; limited. *Id.* c. 55, 34.

ESTREPAMENTUM, *Estrepementum*. L. Lat. In old English law. *Estrepement*; a destructive kind of waste committed by a tenant for life or years in lands, woods or houses. *Spelman*. *Reg. Orig.* 76 b, 77. *Reg. Jud.* 33. See *Estrepement*.

ESTREPE. L. Fr. [from Fr. *estropier*, to mutilate, or Lat. *extirpare*, to root up.] To strip or lay bare, as trees of their branches, or land of wood, houses, &c. To commit waste or spoil in lands, woods or houses, to the damage of another, as of a reversioner.* See *Estrepeement*.

ESTREPEMENT, Estrepeement. L. Fr. and Eng. [L. Lat. *estrepamentum*; from Fr. *estrepe*, or *estropier*, to mutilate; or Lat. *extirpare*, to root up, or utterly destroy.] Spoil made by tenant for life, upon any lands or woods, to the prejudice of the reversioner; as by drawing out the heart of the land by ploughing or sowing it continually, without manuring, or other such usage as is requisite in good husbandry; or by cutting down trees, or lopping them further than the law will allow. *Cowell. Blount.* Called in the old books, *strip*. *F. N. B.* 60, 61.

An aggravated kind of waste (*gravius vasti genus*), committed in lands, woods, or houses, by a tenant for life or years, and especially during the pendency of a suit to recover possession; as by cutting down trees, destroying houses, &c., to the prejudice of the reversioner.*

* * The etymology of this word, as well as its precise meaning, does not seem to be expressed with much clearness in the books. Practically, it appears to have been considered the same as waste, distinguished only by the circumstances under which it was committed, viz.: during the pendency of a suit. This, at least, seems to have been the principal distinction between a writ of *estrepement*, and a writ of waste proper. 3 *Bl. Com.* 225, 226. Spelman is the only writer who seems to have discovered the true derivation of the word, and through that, to have arrived at its radical meaning. *Estrepamentum* is quasi *extirpamentum*, from *extirpare*, to root out, or rase to the foundations; to destroy utterly, (*delere*). In confirmation of this, he refers to the judicial writ *de estrepeamento* in the Register, in which the word *extirpare* is prominently used. *Reg. Jud.* 33 b. Two other writs in the Register of similar character are called writs *de extirpatione*. *Reg. Jud.* 13, 58 b. See *Termes de la Ley*, voc. *Extirpation*.

ESTRETE. L. Fr. An extract. *Britt.* c. 26. See *Estreat*.

ESTRETE. L. Fr. Street; a street, way or road. *En le haut estrete*; in the highway. *Yearb.* H. 2 Edw. II. 27.

ESTRETEMENT, Estreytement. L. Fr. Strictly; closely. *Britt.* cc. 100, 104.

ET. Lat. and Fr. And. See *Calv. Lex. Jur.*

ETABLISEMENT. Fr. In old French law. Establishment; an ordinance, statute or decree. *Les Etablissements de St. Louis* hold a high rank for the wisdom with which they are written, and the curious matter they contain. *Butler's Hor. Jur.* 92. *Steph. Lect.* 199. See *Establishment*.

ETADJOURNATUR, (or Adjournatur). L. Lat. And it is adjourned. A phrase used in the old reports, where the argument of a cause was adjourned to another day; or where a second argument was had. *Yearb.* T. 3 Edw. III. 37. 1 *Keb.* 692, 754, 773. *Keilw.* 65. *Hardr.* 68. *Cro. El.* 180. *T. Raym.* 55. See *Adjournatur*.

ET AL. (Abbreviation of *Et alius* or *alium*.) Lat. And another. **ET ALS.** (abbrev. of *Et alios*.) And others. Abbreviations often used in entitling causes, where there are two or more plaintiffs or defendants.

ET ALII E CONTRA. L. Lat. And others on the other side. A phrase constantly used in the Year Books, in describing a joinder in issue. P. 1 Edw. II. *Prist*; et alii e contra, et sic ad patriam; Ready; and others e contra, and so to the country. T. 3 Edw. III. 4.

ETAS. L. Lat. An old form of *etate*, (q. v.) *Magna Charta*, c. 3.

ET DE CEO SE METTENT EN LE PAYS. L. Fr. And of this they put themselves upon the country. *Fet Assaver*, § 64.

ET DE HOC PONIT SE SUPER PATRIAM. L. Lat. And of this he puts himself upon the country. *Mem. in Scacc.* 22 Edw. I. *Yearb.* T. 1 Edw. II. 11. The old conclusion of a plea in bar by way of traverse. Literally translated in the modern forms. See *Conclusion to the country*.

ET EI LEGITUR IN HÆC VERBA. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record. See *Oyer*.

ET HABEAS IBI TUNC HOC BREVE. L. Lat. And have you then there this writ. A clause in old writs, expressive of the command to return to them. *Reg. Jud.* 1. *Fleta*, lib. 2, c. 64, § 19. *Towns. Pl.* 166. Literally translated in the modern forms.

ET HÆC SANCTA. L. Lat. And these holy (things; i. e. gospels). The

words with which oaths formerly concluded. *Flota*, lib. 2, c. 63, § 12. Expressed in law French, *Et ces saints*; which has sometimes been improperly rendered, "And the saints." See *Oath, Sancta*.

ET HOC PARATUS EST VERIFICARE. L. Lat. And this he is ready to verify. The ancient conclusion of a plea in bar in confession and avoidance. *T. Raym.* 50, 94. 1 *Salk.* 2. *Bract.* fol. 306 b. Literally translated in the modern forms.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM. L. Lat. And this he prays may be inquired of by the country. The conclusion of a plaintiff's pleading, tendering an issue to the country. 1 *Salk.* 6. 1 *Show.* 181. Literally translated in the modern forms.

ET INDE PETIT JUDICIUM. L. Lat. And thereupon, (or thereof,) he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms. *Bract.* fol. 57 b. *Crabb's Hist. Eng. Law*, 217.

ET INDE PRODUCIT SECTAM. L. Lat. And thereupon, (or thereof,) he produces suit. A formula used at the conclusion of declarations, from a very early period, to express the fact that the plaintiff produced to the court, at the time of declaring, the testimony of his *secta*, (i. e. his suit or followers,) for the purpose of confirming his allegations, which the ancient law required. *Bract.* 214 b, 410 a. *Steph. Plead.* 429. 3 *Bl. Com.* 295. *Gilb. C. Pleas*, 48. *Towns. Pl.* 166. This production of the *secta* was originally an actual occurrence. *Et inde producat sectam sufficientem, scilicet probos homines, qui presentes fuerint in curia*; and thereupon he should produce a sufficient suit, to wit, good men who should be present in court. *Flota*, lib. 2, c. 47, § 20. This soon became a mere form, but the clause was retained, though apparently in a new sense, as being supposed to express summarily the grounds of the suit or action, and was afterwards translated into the English formula: "And thereupon (or therefore) he brings his suit," with which declarations now conclude. See *Suit, Secta*.

ET HABUIT. L. Lat. And he had it. A common phrase in the Year Books, expressive of the allowance of an application or demand by a party. *Parn. demanda la view.* *Et habuit*, &c. M. 6 Edw. III. 49.

ET ISSINT. L. Fr. And so. *Co. Litt.* 303 b.

ET MODO AD HUNC DIEM. L. Lat. And now at this day. Words anciently used (as the corresponding English words still are) in entering continuances on record, expressive of the day of appearance of the parties.

ET NON. L. Lat. And not. Words sometimes anciently used in pleading, instead of *absque hoc*, (q. v.)

ET NON ALLOCATUR. L. Lat. And it is not allowed. *Yearb.* M. 2 Edw. III. 19.

ET PETIT AUXILIUM. L. Lat. And he prays aid. *Yearb.* M. 1 Edw. II. 1.

ET PRÆDICTUS A. SIMILITER. L. Lat. And the said A. likewise. The Latin form of the *similiter* in pleading. See *Similiter*.

ET SIC. L. Lat. And so. The commencement of a formula, (as, *et sic nil debet, et sic non est factum*), formerly used as a special conclusion to a plea in bar, in order to render it positive, and to avoid the fault of argumentativeness. *Archb. Civ. Pl.* 224. *Mansel on Demurrer*, 75.

ET SIC AD JUDICIUM. L. Lat. And so to judgment. *Yearb.* T. 1 Edw. II. 10.

ET SIC AD PATRIAM. L. Lat. And so to the country. A common phrase in the Year Books, in recording an issue to the country. *Il ne dona pas, prist, &c. et alii à contra; et sic ad patriam.* M. 3 Edw. III. 29.

ET SIC FECIT. L. Lat. And he did so. *Yearb.* P. 9 Hen. VI. 17.

ET SIC PENDET. Lat. And so it hangs. A term used in the old reports, to signify that a point was left undetermined. *T. Raym.* 168. *Et sic pendet placitum*; and so the plea hangs. *Yearb.* T. 1 Edw. II. 8.

ET SIC ULTERIUS. L. Lat. And so on; and so further; and so forth. *Flota*, lib. 2, c. 50, § 27.

ET UNDE DICIT. L. Lat. And whereupon he says. *Yearb.* M. 1 Edw. II. 1.

EUANGELIÆ, *Evangelies*. L. Fr. The gospels; or evangelists. *Paumant les Evangelies*; laying hands on the gospels. *Britt.* c. 52. *Jurer sur seynz Evangelies de Dieu*; to swear upon the Holy Evangelists of God. *Id.* c. 97.

EUNDO, MORANDO, ET REDEUNDO. L. Lat. In going, staying, and returning. A phrase used to express the extent of the privilege from arrest enjoyed by

the parties to suits, witnesses, &c. See *Privilege from arrest*. A similar phrase was used in the Saxon law. *Eundo ad gemotum, et rediens de gemoto*. *Spelman*, voc. *Gemotum*. *LL. Edw. Conf.* c. 25, cited *ibid*.

EUNDO ET REDEUNDO. Lat. In going and returning. Applied to vessels. 3 *Rob. Adm. R.* 141.

EVASIO. Lat. [from *evadere*, to escape.] In old practice. Escape; an escape from prison or custody. *Reg. Orig.* 312. *Fleta*, lib. 1, c. 26, § 4.

EVENTUS. Lat. [from *evenire*, to come out, or come from.] In old English law. An event; a thing which happens from a cause. *Eventus est qui ex causa sequitur, et dicuntur eventus quia ex causa eveniunt*; an event is that which follows from a cause, and they are called events because they come out of a cause. 9 *Co.* 81 b.

EVERWYK, Everwike, Everwik. L. Fr. York. *Conf. Cartar.* 25 Edw. I. *Reg. Orig.* 76 b, *regula*. Probably shortened from the Lat. *Eboracum, Eborac, Evorac*. Translated Warwick, in *Dyer*, 37 b.

Every man must be taken to contemplate the probable consequences of the act he does. Lord Ellenborough, 9 *East*, 277. A fundamental maxim in the law of evidence. *Best on Pres.* § 16. 1 *Phill. Ev.* 444. 1 *Greenl. Ev.* § 18. 9 *B. & C.* 643. Lord Ellenborough, 3 *M. & S.* 11, 17. *Burr. Circ. Ev.* 43, 44, 298, 809.

EVESCHE, Euesche. L. Fr. A diocese. *Britt.* c. 107.

EVESQUE. L. Fr. A bishop. *Litt.* sect. 651.

EVESQUERY. L. Fr. A bishopric. *Litt.* sect. 651.

EVICT. [from Lat. *evincere*, q. v.] In the civil law. To take something from a person, by virtue of a judicial sentence or recovery at law. *Evincere est aliquid vincendo auferre*.* *Pothier, Contr. of Sale*, part 2, ch. 1, sect. 2, art. 1.

In the common law. To recover land by process of law. "If the land is *evicted*, no rent shall be paid." 10 *Co.* 128 a. The term is now applied to a tenant against whom land is recovered, or who is otherwise compelled to leave the demised premises. "If the tenant be *evicted* from the lands demised to him, by a title paramount, before the rent falls due, he will be discharged from the payment of the rent." 3 *Kent's Com.* 464. See *Eviction*.

EVICITION. [Lat. *evictio*, from *evincere*,

to overcome, to prevail in law.] In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so. *Pothier, Contr. of Sale*, part 2, ch. 1, sect. 2, art. 1, n. 83. The abandonment which a buyer is compelled to make of a thing purchased, in pursuance of a judicial sentence.* *Id. ibid*.

The sentence which orders such abandonment. *Id.*

The depriving a buyer, without any sentence, of the power to retain the thing bought, in virtue of the sale. *Id.* n. 86.

The loss suffered by the buyer of the totality of the thing sold, or of a part thereof, occasioned by the right or claims of a third person. *Civil Code of Louisiana*, art. 2476.

EVICITION. In the common law. The recovery of lands, &c., by form of law.* 10 *Co.* 128. *Tomlins*.

The recovery from a tenant of the whole or a part of the demised premises, by a title paramount to that derived from his landlord.* 3 *Kent's Com.* 464, 465.

The compelling a tenant to abandon the demised premises, by rendering them unfit for occupation; as by a nuisance.* *Id.* 464, note. 1 *Carr. & M.* 479.

The recovery from a vendee, of land purchased by him, under a paramount title.* 4 *Kent's Com.* 475—477.

EVIDENCE. [Lat. *evidentia*, from *evidens*, clear.] That which tends to render evident, or clear; the means by which the truth of a fact or point in issue is made clear or demonstrated.* *Best on Evid.* 8, § 11. 3 *Bl. Com.* 367.—Any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact. *Best on Evid. ub. sup.* *Best on Pres.* 7, § 6. 1 *Benth. Jud. Ev.* 17.—The word *evidence*, in legal acceptance, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 *Greenleaf on Evid.* § 1. See *Burr. Circ. Evid.* 1.

Any proof, be it testimony of men, records or writings. *Cowell*. Proof, either written or unwritten, of facts in issue between parties. *Wharton's Lex.* The terms *evidence* and *proof* are constantly used in practice as synonymous. 3 *Bl. Com.* 367. 3 *Steph. Com.* 604. Strictly, however,

proof is the effect or result of evidence; *evidence* is the medium of proof. 1 *Greenl. on Ev.* § 1. Without evidence there can be no proof, although there may be evidence which does not amount to proof. *Best on Pres.* 8, § 6. *Burr. Circ. Ev.* 1, 2.

EVIDENCE OF DEBT. A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. 1 *N. Y. Rev. Stat.* [599], 601, § 5.

EVIDENCES OF TITLE. Deeds and other documents establishing the title to property, especially real estate, (*quibus jus prædiorum firmatur*). *Spelman*.

EVIDENTIA. Lat. [from *evidens*, clear, open to view, from *e*, out, and *videre*, to see.] In the civil law. Clearness or fullness of conviction. *Mascard. de Prob. lib.* 1, quæst. 8. *Best on Pres.* § 6, note.

The state or quality of being evident, that is, clear, manifest, open to view. The true radical meaning of the English word *evidence*. *Johnson's Dict.*

EVIDENTIARY. Having the quality of evidence; constituting evidence; evidencing. A term introduced by Mr. Bentham, and, from its convenience, adopted by other writers. See *Burr. Circ. Ev.* 3, and note.

EVINCERE. Lat. In the civil law. To overcome or prevail at law, (*vincere judicio*). *Calvin's Lex.*

To take a thing from one by right of ownership, through a judicial sentence, (*per sententiam judicis*). *Brissonius*.

To claim a thing by suit as one's own by right of ownership, from him who had no right to it, but has given or sold it to another; and to wrest it from the purchaser by a judicial sentence, condemning him to give it up. *Præcius Lex.*

EW. Sax. Marriage. See *Ewbrice*.

EWA. L. Lat. In old German and Saxon law. Law. *Spelman*.

EWAGE. [from L. Fr. *ewe*, q. v.] In old English law. Toll paid for water passage. The same as *aquage*. *Cowell. Tomlins*.

EWBRICE. Sax. [from *ew*, marriage, and *brice*, or *bryce*, a breach.] Marriage breach; adultery. *Cowell. Blount. Tomlins*.

EWE. L. Fr. Water. *Ewe douce*; fresh water. *Britt. c.* 1. *Au fil del ewe*; to the thread (edge) of the stream. *Id.* c. 42.

The water ordeal. *LL. Gul. Conq.* l. 17. See *Alt al ewe*.

EWE. L. Fr. *Had. Litt.* sect. 253, 690.

EX. Lat. From; of; out of. *Ex facto*, (q. v.); from fact. *Ex contractu*, (q. v.); from, or out of contract. *Ex mero motu*, (q. v.); of mere motion. See 2 *Salk.* 622.

By, or with. *Ex assensu*, (q. v.); by the assent. *Ex causa*, (q. v.); by title.

On; upon. *Ex dimissione*, (q. v.); on the demise. *Ex facie*, (q. v.); on the face. *Ex relatione*, (q. v.); on the relation.

According to. *Ex æquitate*, (q. v.); according to equity.

At or in. *Ex arbitrio*, (q. v.); at the discretion.

EX ABUNDANTI. Lat. Out of abundance; abundantly; superfluously; more than sufficient. *Calv. Lex. Jur.* *Ex abundantanti.* *Mem. in Scacc. H.* 22 *Edw. I.*

EX ABUNDANTI CAUTELA. Lat. Out of abundant caution. "The practice has arisen *ex abundantanti cautela*." 8 *East*, 319. Lord Ellenborough, 4 *M. & S.* 544.

EX ABUNDANTIA. Lat. Out of abundance. *Yearb. M.* 20 *Hen. VI.* 16.

EX ADVERSO. Lat. On the other side. 2 *Show.* 461. Applied to counsel.

EX ÆQUITATE. L. Lat. According to equity; in equity. *Fleta*, lib. 3, c. 10, § 3.

EX ÆQUO ET BONO. Lat. According to what is just and good; according to equity and good morals or conscience. 3 *Bl. Com.* 162. A phrase derived from the civil law, in which it is more commonly expressed *ex bono et æquo*, (q. v.)

EX ALTERA PARTE. L. Lat. Of the other part. *Yearb. H.* 6 *Edw. II.* 191.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpretation [of a part of an instrument] is made from the antecedents and the consequents, [from the preceding and following parts]. 2 *Inst.* 317. The law will judge of a deed or other instrument consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. *Broom's Max.* 249, [442, 443]. The whole instrument is viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 *Kent's Com.* 555. The construction must be made upon the entire instrument, and not merely upon disjointed parts of it; the whole context must be considered, in endeavoring to collect the

intention of the parties, although the immediate object of inquiry be the meaning of an isolated clause. *Broom's Max.* 249, [442], and cases cited *ibid.* See *Antecedens.*

EX ARBITRIO JUDICIS. Lat. At, in or upon the discretion of the judge. 4 *Bl. Com.* 394. A term of the civil law. *Inst.* 4. 6. 31.

EX ASSENSU CURLÆ. L. Lat. With the assent of the court. *Ex assensu totius curiæ*, Crew, C: J. gave judgment *quod querens nil capiat.* *Latch.* 139.

EX ASSENSU PATRIS. Lat. By or with the father's consent. *Litt.* sect. 40. 2 *Bl. Com.* 133. See *Cro. Jac.* 415, 587.

EX ASSENSU SUO. L. Lat. With his assent. Formal words in judgments for damages by default. *Comb.* 220.

EX ASSIGNATIONE. L. Lat. From, or on the assignment. *Reg. Orig.* 75 b.

EX BONIS. Lat. Of the goods or property. A term of the civil law; distinguished from *in bonis*, as being descriptive of, or applicable to property not in actual possession. *Calv. Lex.* *Sive in bonis sit, sive non, si tamen ex bonis sit, locum hæc actio habebit*; whether it be actually among his goods, (in his actual possession) or not, yet if it be of his goods, (or a part of his property) this action shall have place. *Inst.* 4. 2. 2.

EX BONO ET ÆQUO. Lat. According to what is good and just; according to conscience and equity; according to good faith and equity. *Inst.* 4. 6. 30, 31, 39. A phrase of the civil law.

EX CAUSA. L. Lat. By title. *Ex causâ successionis, sive ex causâ perquisiti*; by title of succession, or by title of purchase. *Bract.* fol. 92 b. *Ex causâ successionis, vel donationis, vel ex causâ dotis, vel ex aliqua alia justa causâ acquirendi*; by title of succession, or of gift; or by title of dower, or by any other lawful title. *Id.* fol. 183 b. See *Id.* fol. 10 b. *Ex una causâ—ex eadem causâ—ex nova causâ.* *Id.* fol. 45.

EX CERTA SCIENTIA. Lat. Of certain or sure knowledge. Formal words anciently used in letters patent, implying that the king had full knowledge and understanding of the matter. 1 *Co.* 40 b; *Alton Wood's case.* 1 *Mann. Gr. & Scott,* 518, arg. See *Ex gratia speciali*, &c.

EX COMITATE. Lat. Out of comity, or courtesy; by courtesy. 2 *Kent's Com.*

457. See *Comitas.* *Ex comitate et jure gentium.* Lord Mansfield, 1 *W. Bl.* 258.

EX COMMODATO. Lat. From, or out of loan. A term applied, in the old law of England, to a right of action arising out of a loan, (*commodatum*). *Glanv.* lib. 10, c. 13. 1 *Reeves' Hist.* 166.

EX COMPARATIONE SCRIPTORUM. L. Lat. By a comparison of writings, or handwritings. A term in the law of evidence. *Best on Presumptions*, 218. See *Comparison, Comparatio.*

EX CONCESSIONE. L. Lat. From, on, or by the grant. *Reg. Orig.* 75 b.

EX CONCESSIS. Lat. From things or premises granted.

EX CONTINENTI. Lat. Immediately; without any interval or delay; incontinently. A term of the civil law. *Calv. Lex.*

EX CONTRACTU. Lat. From contract; arising out of, or founded on contract; the opposite of *ex delicto*. A term of the civil law, expressive of one of the principal divisions of the grounds of obligations and of actions. *Inst.* 3. 14. 2. *Id.* 4. 1, pr. *Id.* 4. 6. 1, 17, 18. *Dig.* 44. 7. 1. 1 *Mackeld. Civ. Law*, 101, § 195. Adopted at a very early period in the English common law, and still constantly employed in the law of actions. *Bract.* fol. 99. *Fleta*, lib. 2, c. 1, § 2. 3 *Bl. Com.* 117. 1 *Tidd's Pr.* 1. 1 *Chitt. Pl.* 2.

EX DEBITO JUSTITIÆ. L. Lat. From, or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of *ex gratia*, (q. v.) 3 *Bl. Com.* 48, 67. 4 *Id.* 330, 392. In the Mirror, writs grantable *come de det* (as of debt or right,) are distinguished from those *de grace.* *Mirr.* c. 5, § 1. 9 *Co.* pref.

EX DEFECTU SANGUINIS. L. Lat. From failure of blood; for want of issue. *Hale's Anal.* sect. xix.

EX DELICTO. Lat. From fault or crime; arising out of, or founded upon misconduct, malfeasance or tort. A term of the civil law, expressive of one of the principal divisions of the grounds of obligations and of actions. *Inst.* 4. 1. tit. & pr. 1 *Mackeld. Civ. Law*, 192, § 195. Constantly associated with its opposite *ex contractu*, and introduced with that term into the law of England, at a very early period. *Bract.* fol. 101 b. *Fleta*, lib. 2, c. 1, § 2. 3 *Bl. Com.* 117. See *Ex contractu.*

As a consequence of crime, or violation of law. Used, in this sense, in the law of

nations. "Contraband goods are seized and condemned *ex delicto*." 1 *Ken's Com.* 143. See *Id.* 125.

EX DEM. An abbreviation of *ex demissione*, (on the demise); frequently used in the titles of ejectment suits. See the reports *passim*.

EX DEMISSIONE. L. Lat. From, or on the demise. Usually written *ex demissione*, (q. v.)

EX DICTO MAJORIS PARTIS. L. Lat. According to the saying, or verdict of the majority. *Ex dicto majoris partis juratorum*; according to the verdict of the major part of the jurors. Anciently it was not necessary, (at least, not in civil causes,) that all the twelve should agree; but, in case of difference among the jury, the method was to separate one part from the other, and then to examine each of them as to the reasons of their differing in opinion; and if, after such examination, both sides persisted in their former opinions, the court caused both verdicts to be fully and distinctly recorded, and then judgment was given *ex dicto majoris partis juratorum*. *Hale's Hist. Com. Law*, (Runnington's ed. 1820,) 349, note.

EX DIMISSIONE. L. Lat. On the demise. *Reg. Orig.* 75 b, 163 b.

EX DIRECTO. L. Lat. Directly; immediately. *Story on Bills*, § 199.

Ex diuturnitate temporis, omnia presumuntur solemniter esse acta. From length of time [after lapse of time] all things are presumed to have been done in due form. *Co. Litt.* 6 b. *Best on Evid.* Introd. § 43. 1 *Greenl. on Ev.* § 20.

EX DOLO MALO. Lat. Out of fraud. *Ex dolo malo non oritur actio*. Out of fraud no action arises; fraud never gives a right of action. *Cowp.* 341, 343. *Broom's Max.* 349, [571]. See *Dolus malus*.

EX EMPTO. Lat. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton. *Inst.* 4. 6. 28. *Bract.* fol. 102. See *Actio ex empto*.

EX FACIE. L. Lat. On the face. 2 *Steph. Com.* 153.

EX FACILI. Lat. Easily. *Calv. Lex.*

EX FACTO. Lat. From, by or in consequence of an act, or thing done. *Bract.* fol. 172. Applied generally to an act done in violation of law or right. A title is said to originate *ex facto*, when it commences in an unlawful act. *Id. ibid.* Bracton uses it in the same sense with *de facto*, (q. v.) *Id. ibid.*

Ex facto jus eritur. Law arises out of fact, or is brought into exercise by fact.* A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape. *Best on Evid.* Introd. § 1.

The law arises out of the fact, or is determined or regulated by the fact. 3 *Bl. Com.* 329. The decision of the law in a particular case, depends upon the fact which is proved or made to appear. Otherwise expressed, *De facto jus eritur*. 2 *Inst.* 49.

EX FICTIONE JURIS. L. Lat. Out of, or by fiction of law. *Bract.* fol. 53.

EX GRATIA. Lat. Out of grace, or favor; (Fr. *de grace*;) as a matter of mere grace or indulgence. The opposite of *ex debito*. 4 *Bl. Com.* 392.

EX GRATIA SPECIALI, CERTA SCIENTIA ET MERO MOTU. L. Lat. Out of special grace, certain knowledge and mere motion. Formal words anciently used in royal charters and letters patent; otherwise expressed, *De gratia speciali, ex certa scientia, et mero motu*, (q. v.) 1 *Co.* 43, 45, 46, 49. See 6 *Peters' R.* 691, 738.

EX GRAVI QUERELA. L. Lat. (From, or on the grievous complaint.) In old English practice. The name of a writ (so called from its initial words,) which lay for a person to whom any lands or tenements in fee were devised by will, (within any city, town or borough wherein lands were devisable by custom,) and the heir of the devisor entered and detained them from him. *Reg. Orig.* 244 b. *F. N. B.* 198, L. et seq. 3 *Reeves' Hist.* 49. Abolished by statute 3 & 4 Will IV. c. 27, § 36.

EX IMPROVISO. L. Lat. Without preparation. *Dyer*, 28.

EX INDUSTRIA. Lat. From, or with a deliberate design; on purpose. *Story*, J. 1 *Wheaton's R.* 304. 1 *Ken's Com.* 318.

EX INSINUATIONE. L. Lat. On the suggestion or information. *Yearb. P.* 8 Edw. III. 24. *Reg. Jud.* 25.

EX INTEGRO. Lat. Anew; afresh. *Bract.* fol. 293.

EX INTERVALLO. L. Lat. After an interval. *Fleta*, lib. 2, c. 60, § 2.

EX JUSTA CAUSA. Lat. From a just or lawful cause; by a just or legal title. See *Ex causa*.

EX LATERE. Lat. From the side;

collaterally; a collateral relation. *Dig.* 23. 2. 68.

EX LEGIBUS. Lat. According to the laws. A phrase of the civil law, which the Digests declare to signify—according to the intent or spirit of the law, as well as according to the words or letter. (*Ex legibus accipiendum est tam ex legum sententia quam ex verbis.*) *Dig.* 50. 16. 6. See *Calv. Lex.*

EX LICENTIA REGIS. L. Lat. By the king's license. 1 *Bl. Com.* 168, note.

EX LOCATO. Lat. From, or out of letting. A term of the civil law, applied to actions or rights of action arising out of the contract of *locatum*, (q. v.) *Inst.* 4. 6. 28. Adopted at an early period in the law of England. *Bract.* fol. 102. 1 *Reeves' Hist.* 166.

EX MALEFICIO. Lat. From, arising out of, or founded upon misconduct or malfeasance. A term of the civil law, used (more commonly than *ex delicto*,) as the opposite of *ex contractu*. *Inst.* 3. 14. 2. *Id.* 4. 1, pr. *Dig.* 44. 7. 4. Adopted by Bracton, but not much used in this sense in modern law. *Bract.* fol. 99, 101, 102.

Out of a vicious or illegal act. **Ex maleficio non oritur contractus.** A contract cannot arise out of an act radically vicious and illegal. 1 *Term R.* 734. Lord Kenyon, C. J. 3 *Id.* 422. *Broom's Max.* 351, [576].

EX MERO MOTU. L. Lat. Of mere motion. Formal words in old English letters patent. 1 *Co.* 40 b; *Alton Wood's case.* See *Ex gratia speciali*, &c.

EX MORA. Lat. From, or in consequence of delay. Interest is allowed *ex mora*, that is, where there has been delay in returning a sum borrowed. A term of the civil law. *Story on Bailm.* § 84.

EX MORE. Lat. According to custom. *Calv. Lex.*

Ex multitudine signorum, colligitur identitas vera. From a great number of signs or marks, true identity is gathered or made up. *Bacon's Max.* 103, in regula 25. A thing described by a great number of marks is easily identified, though, as to some, the description may not be strictly correct. *Id.*

EX MUTUO. Lat. From, or out of loan. In the old law of England, a debt was said to arise *ex mutuo*, when one lent another any thing which consisted in number, weight or measure. 1 *Reeves' Hist.* 159. *Bract.* fol. 99.

EX NECESSITATE. Lat. Of necessity. 3 *Rep. in Ch.* 123.

EX NECESSITATE LEGIS. Lat. From, or by necessity of law. 4 *Bl. Com.* 394.

EX NECESSITATE REI. Lat. From the necessity or urgency of the thing or case. 2 *Powell on Dev.* (by Jarman,) 308.

Ex nudo pacto non oritur [nascitur] actio. Out of a nude or naked pact, [that is, a bare parol agreement without consideration,] no action arises. *Bract.* fol. 99. *Fleta*, lib. 2, c. 56, § 3. *Keilw.* 82 b. *Plowd.* 305. Out of a promise neither attended with particular solemnity, (such as belongs to a specialty,) nor with any consideration, no legal liability can arise. 2 *Steph. Com.* 113. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law. *Cod.* 2. 3. 10. *Id.* 5. 14. 1. *Noy's Max.* 24. *Broom's Max.* 336, [583]. 2 *Bl. Com.* 445. *Smith on Contracts*, 85, 86. See *Nudum pactum*.

EX OFFICIO. Lat. [L. Fr. *de office*, q. v.] From office; by virtue or as a consequence of office; without any other appointment or authority than that conferred by the office. Courts are bound to take notice of public acts, judicially, and *ex officio*. 1 *Bl. Com.* 86.

Ex pacto illicito non oritur actio. From an illegal contract, an action does not arise. *Broom's Max.* [581]. See 7 *Cl. & Fin.* 729.

EX PARTE. L. Lat. From, or of a part or side; of the one part; from, or upon one side. A common term in practice, which seems to have originally been derived from the canon law. *Durand. Spec. Jur.* lib. 2, tit. *De rescript. presentatione, passim.* See *Calv. Lex.* An *ex parte* application to a court is an application made by one party only, without notice to the opposite party, or opportunity given him to oppose it.* *Holthouse.* 1 *Burr. Pr.* 340.

EX PARTE MATERNA. Lat. On the maternal side; in the maternal line. 1 *Steph. Com.* 382. 2 *Crabb's Real Prop.* 1021, § 2401. *Ex parte matris*; on the side of the mother. *Stat. Westm.* 2, c. 16.

EX PARTE PATERNA. Lat. On the paternal side; in the paternal line. 1 *Steph. Com.* 381, 382. 2 *Crabb's Real Prop.* 1020, § 2400, *et seq.* *Ex parte patris*; of the father's side; on the side of the father. *Stat. Westm.* 2, c. 16.

EX PARTE TALIS. L. Lat. (On the

behalf of such a one.) In old English practice. The name of a writ which lay for a bailiff or receiver, who, having auditors assigned to hear his account, could not obtain of them reasonable allowance, but was cast into prison by them. *Cowell. F. N. B.* 129, F.

EX PATIENTIA. L. Lat. By sufferance. *Fleta*, lib. 4, c. 18, § 1.

EX PAUCIS. Lat. From a few things or words.

Ex paucis dictis intendere plurima posita.

From a few words, you may understand many things. *Litt.* sect. 384. "By this verse," says Lord Coke, "inferences and conclusions in like cases are warrantable." *Co. Litt.* 237.

Ex paucis plurima concipit ingenium; from a few words or hints the understanding conceives many things. *Litt.* sect. 550.

EX POST FACTO; properly, EX POSTFACTO, or EX POST-FACTO. Lat. From, by or in consequence of an after-act, or thing done afterwards; by matter of subsequent occurrence; by after-matter. A term of the civil law, introduced into the common law at a very early period, and the precise import of which may be better understood from the following examples: *Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest.* An institution or act which was of no effect at the beginning, (when made or done) cannot acquire force or validity from after-matter, (as by lapse of time). *Dig.* 50. 17. 210. *Nunquam crescit ex postfacto præteriti delicti æstimatio.* The estimate of the character of a past offence is never enhanced by after-matter. *Dig.* 50. 17. 138. 1. *Non ex post-facto, sed ex præsentis statu damnum factum sit, necne, æstimari oportere, Labeo ait;* Labeo says that the question whether a damage be done [to a building] or not, is to be determined not from any after-act or occurrence, but from the condition of the building at the time. *Dig.* 43. 24. 7. 4. *Donationum, quædam valida esse possunt ab initio, et invalida fieri ex post facto, et è converso;* of gifts, some may be valid at the beginning (or when made,) and become invalid by subsequent matter, and è converso. *Bract.* fol. 11 b, 12. *Non mandante, nec auctoritate præstante ab initio, sed ex post facto ratum habente;* not commanding nor giving authority at the beginning, (or originally,) but ratifying it by an after-act, (or after-

wards). *Id.* fol. 171. *Sive ratum habuerit ab initio, vel ex post facto;* whether he ratified it at the beginning or afterwards. *Id.* fol. 213. *Item id quod ab initio non fuit nocumentum injuriosum, ex post facto, et per constitutionem fieri poterit injuriosum;* also that which originally was not an injurious nuisance, may be made injurious by after-act or matter, and in consequence of agreement. *Id.* fol. 232. See *Fleta*, lib. 4, c. 26, § 4. *Poterit esse [summonitio] legitima ab initio, sed inefficax ex post facto;* the summons may be lawful at first, but become of no force in consequence of after-matter, (or afterwards). *Bract.* fol. 336 b.

It will be seen from the preceding quotations, that *ex post facto* has always been used in contrast with the still common phrase *ab initio*, which, indeed, seems to be its proper correlative; and hence the two phrases may be conveniently employed to illustrate each other. Thus, a man may become a trespasser *ab initio*, (from the beginning, or first act,) in consequence of a subsequent act, (*ex post facto*), although his first act was, at the time it was done, a lawful one. *Chase, J. 3 Dallas' R.* 386. See *Trespasser ab initio*. On the other hand, an act unlawful in the beginning, (*ab initio*), may in some cases become lawful by matter of after-fact, (*ex post facto*). *Chase, J. ub. sup.* Again, an act which was indifferent in itself when done, (that is, *ab initio*), is sometimes made criminal or punishable *ex post facto*, (by a subsequent act, or matter,) that is, a law made afterwards, (*ex lege post lata*). See *Ex post facto law*.

* * *Ex post facto* seems to have been a familiar phrase in English law in the time of Bracton, and the very numerous examples of its use and application furnished by that writer, (a few only of which have been quoted,) show that its grammatical signification was then perfectly well ascertained. Afterwards, however, it fell into comparative disuse, and it may now be said to be less common in English than in American jurisprudence. See *Ex post facto law*. Its substantial import seems to be well enough understood, but its grammatical meaning has, in general, been either wholly misapprehended, or singularly mixed up with error. Thus, it has been translated in two of the latest English law dictionaries,—“from something after the fact,”—“from an after act; after a deed is done.” *Wharton's Lex. Holthouse.* See also the opin-

ion of Chase, J. 3 *Dallas' R.* 386. This misapprehension and error have arisen, in part, from the narrow sense given to the word *facto*, (confining it to the *acts of individuals*;) but principally from the common mode of writing the whole phrase, which presents *post* as a distinct word, thereby not only leading to an ungrammatical connection of its meaning with that of *facto*, (in the expressions "after a deed," "after the fact,") but entirely destroying the sense and force of the word *ex*, which, in the ordinary translations, is quite disregarded. Strictly, *post* should be connected with *facto*, either as one entire word, (*postfacto*;) in which form it usually occurs in the civil law, and frequently in Bracton, or as a double word, (*post-facto*;) the latter form having the express authority of Aulus Gellius, who uses both *post-facta* and *ante-facta* in a passage which will be referred to under *Ex post facto law*. This mode of writing the phrase dissipates at once all the grammatical difficulty hitherto supposed to attend the use of *post* in immediate juxtaposition with *ex*; (both words being commonly treated as prepositions, although *post* is in fact an adverb, with the sense of *afterwards*.) *Ex post-facto* is thus most distinctly contrasted with its correlative *ab initio*; the meaning of *ex* is the one phrase being at once seen to correspond with that of *ab* in the other. See *Postfactum*. It may be added that the whole phrase *ex postfacto* is frequently used in old English law, as synonymous with *postea*, (afterwards,) or *post tempus*, (after a time). *Bract.* fol. 213. *Fleta*, lib. 3, c. 3, §§ 5, 7. *Id.* lib. 4, c. 26, § 4.

EX POST FACTO LAW. A law which operates *by after-enactments*.*—A law which makes an act done before its passage, and which was innocent when done, criminal. 3 *Dallas' R.* 386.—A law which renders an act punishable in a manner in which it was not punishable when committed. 3 *Cranch's R.* 87. Marshall, C. J. *ibid.* *Federalist*, No. 84. 1 *Kent's Com.* 409. The making of laws *ex post facto* is when, after an action, (in-different in itself) is committed, the legislator then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it. 1 *Bl. Com.* 46. 1 *Steph. Com.* 27.

The use of the term *ex post facto*, in the Constitution of the United States, (Art. I. Sect. IX. X.) has occasioned considerable

discussion as to its exact meaning; which, however, has resulted in establishing the definitions above given. An *ex post facto* law is a species of retrospective law, which is confined in its operation to the creation or the punishment of a *crime*; and the term is not properly applicable to any other kind of retrospective enactment. Chase, J. 3 *Dallas' R.* 386. 17 *Howard's R.* 456, 463. 1 *Kent's Com.* 409. Instead of using the term *ex post facto*, the constitutions of some of the states, in prohibiting such laws, describe them as "laws made to punish for actions done before the existence of such laws;" (*Constitution of Massachusetts*, part 1, sect. 24;) "retrospective laws." *Const. of N. Hampshire*, part 1, art. 23. Others employ both the phrase itself, and its explanation. *Constit. of Florida*, art. 1, sect. 18.

* * The inaccuracy of most of the literal translations of the phrase *ex post facto* has been already noticed under that head. See *supra*. It appears, however, most strikingly in the attempts made to give a strict and literal explanation of the phrase *ex post facto law*. Thus, it is said, that an *ex post facto* law means a law "passed *concerning* and *after a fact* or thing done, or action committed;" a law passed "*after a fact* done by a subject or citizen, which shall have relation to such fact, and shall punish him for having done it." Chase, J. 3 *Dallas' R.* 386. The error of this kind of translation, and the cause of it, have been already explained. See *Ex post facto*. The true meaning of the phrase is made very apparent by writing *post-facto* (or *postfacto*) as one word, and thus giving to *ex* its full and proper sense of *from* or *by*. In this way, it becomes susceptible not only of a literal, but of a grammatical translation; "an *ex post-facto* law" signifying "a law operating *by after-enactment*;" that is, upon previous acts.

The following passage from Aulus Gellius, while it clearly justifies the use of *post-facto* as one word, furnishes in other respects a very apposite illustration. The old Atinian law had this provision: *Quod subreptum erit, ejus rei æterna auctoritas esto*; whatever thing shall be privily stolen, let the ownership of that thing be perpetual; that is, the property of the owner shall never be devested out of him by the theft. Gellius records that a question arose upon the word *erit*, as to the operation of this law, and that Scævola, Brutus and Manilius, men of

the first learning, were in doubt *utrumne in post-facta modo furta lex valeret, an etiam in ante-facta*; (whether the law took effect only on thefts committed after it, or on those committed before, also). *Noct. Att. lib. xvii. c. 7.* In other words, the question was, whether this was an *ex post-facto* law or not. The phrase "*in ante-facta*," (upon acts or actions done before,) in this passage, expresses the peculiar operation of such a law more distinctly, perhaps, than *ex post facto* itself, and is almost literally translated in the best modern definitions. See *supra*. The words *ante-facta* and *post-facta*, as contrasted in the same passage, both obviously refer exclusively to the acts of individuals; but in the phrase *ex post-facto*, the *post-factum* (after-act or post-act) is the act of the legislature itself in passing the law; the *ante-factum* being the act of the individual upon which the law is made to operate retrospectively. This distinction is noticed by Mr. Justice Chase, in the case already referred to. 3 *Dallas' R.* 386.

EX PRÆCOGITATA MALICIA. L. Lat. Of malice aforethought. *Reg. Orig.* 102.

EX PRÆMISSIS. Lat. From the premises; from what has gone before; from what has been said. *Fleta*, lib. 5, c. 11, § 7.

EX PROPRIO VIGORE. L. Lat. By their, or its own force. 2 *Ken's Com.* 457.

EX PROVISIONE HOMINIS. L. Lat. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law. 11 *Co.* 80 b.

EX QUASI CONTRACTU. L. Lat. From quasi contract. *Fleta*, lib. 2, c. 60.

EX REL. An abbreviation of EX RELATIONE, on the relation. A term used in the titles of legal proceedings, which are prosecuted by the people, on the relation or information of the aggrieved party, who is called the *relator*. See *Ex relatione, Relator*.

EX RELATIONE. L. Lat. On the relation. *Bract.* fol. 403 b.

EX RELATU. L. Lat. On the relation, or information. *Reg. Orig.* 34, 36, 42.

EX RIGORE JURIS. L. Lat. According to the rigor or strictness of law; in strictness of law. *Fleta*, lib. 3, c. 10, § 3.

EX SCRIPTIS OLIM VISIS. L. Lat. From writings formerly seen. A term used as descriptive of that kind of proof of handwriting, where the witness has seen letters or documents professing to be the handwriting of a party, and has afterwards had correspondence or communication with such party, so as to induce a reasonable presumption that the letters or documents were actually his handwriting. 5 *Ad. & El.* 703, 730. *Best on Presumptions*, 219.

EX SPECIALI GRATIA, CERTA SCIENTIA ET MERO MOTU. L. Lat. Of special grace, certain knowledge, and mere motion. 2 *Bl. Com.* 347. 6 *Peters' R.* 738. See *Ex gratia speciali, &c.*

EX STATUTO. L. Lat. According to the statute. *Fleta*, lib. 5, c. 11, § 2.

EX STIPULATU ACTIO. Lat. In the civil law. An action of stipulation. An action given to recover marriage portions. *Inst.* 4. 6. 29.

EX SUPERABUNDANTI. L. Lat. Out of superabundance, or superfluity. See *Ex abundanti. Ex superabundanti, et ad majorem cautelam*; out of superabundance, and for greater security. 2 *Hov. St. Trials*, 1184. *Ad cautelam et ex superabundanti. Id.* 1163.

EX TEMPORE. Lat. From, or in consequence of time; by lapse of time. *Bract.* fol. 51, 52. *Ex diuturno tempore*; from length of time. *Id.* fol. 51 b.

EX TESTAMENTO. Lat. From, by or under a testament, or will. *Inst.* 2. 9. 7. *Cod.* 6. 30. 19.

Ex tota materia emergat resolutio. The explanation should arise out of the whole subject matter; the exposition of a statute should be made from all its parts together. *Wingate's Max.* 238.

EX TRANSVERSO. Lat. Across. *Ex transverso via*; across the way. *Town's Pl.* 31. See *A latere*.

Ex turpi causa non oritur actio. Out of a base [illegal, or immoral] consideration, an action does [can] not arise. 1 *Selwyn's N. Pr.* 63. *Broom's Max.* 350, [573]. *Story on Agency*, § 195.

Ex turpi contractu actio non oritur. From an immoral, or iniquitous contract, an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action. 2 *Ken's Com.* 466. *Dig.* 2. 14. 27. 4. All contracts which have for their object anything repugnant to justice, or against the

general policy of the common law, or contrary to the provisions of any statute, are void. Nelson, C. J. 2 *Hill's* (N. Y.) R. 434, 437.

EX UNA PARTE. Lat. Of one part or side; on one side.

EX UTRAQUE PARTE. Lat. On both sides. *Dyer*, 126 b.

EX UTRISQUE PARENTIBUS CONJUNCTI. L. Lat. Related on the side of both parents; of the whole blood. *Hale's Hist. Com. Law*, c. xi.

EX VISCERIBUS. Lat. From the bowels; from the interior or essential substance. *Ex visceribus causæ*; from the bowels or heart of the cause. 10 Co. 24 b. *Ex visceribus testamenti*; from the particular will in question itself, without reference to the language or construction of other wills. Lord Ellenborough, 4 M. & S. 97. 2 *Metcalfe's R.* 213.

EX VISITATIONE DEL. L. Lat. By the visitation of God. 4 Bl. Com. 324.

EX VISU SCRIPTIONIS. L. Lat. From sight of the writing; from having seen a person write. A term-employed to describe one of the modes of proof of handwriting. *Best on Presumptions*, 218.

EX VI TERMINI. L. Lat. From, or by the force of the term. 2 Bl. Com. 109, 115.

EXACTIO. L. Lat. A demand. Co. Litt. 292 a.

EXACTION. A wrong done by an officer or one in pretended authority, by taking a reward or fee for that which the law allows not. *Jacob. Tomlins*.

EXACTOR. Lat. In the civil law. A collector, or exactor. *Exactores tributorum*; collectors of taxes. *Cod.* 10. 19.

In old English law. One who collected taxes and other public moneys. *Exactor regis*; the king's exactor, who collected the taxes and other moneys due to the treasury. In the counties, this office was performed by the sheriff; in the seaports and cities, by publicans and their assistants. *Spelman*.

EXADONIARE, Exidoniare. L. Lat. In old European law. To manumit, or make free. *Spelman. L. Alaman.* tit. 18, § 5, cited *ibid*.

EXA'ITR. A contraction of *Examinatur*. 1 *Inst. Cl.* 10.

EXALTARE. L. Lat. In old English law. To raise or elevate. *Exaltare stagnum*; to raise a pool. *Reg. Orig.* 199, *F.N.B.*

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184, O. To raise the water in a pond by damming, so as to overflow another's land. *Bract. fol.* 232. *Fleta*, lib. 4, c. 1, § 19.

EXAMEN. L. Lat. A trial. *Examen computi*; the balance of an account. *Towns. Pl.* 223.

EXAMINATION DE BENE ESSE. In practice. A conditional examination. The examination of a witness out of court before a trial, with the view of using his deposition in case his personal attendance cannot be procured at the trial. See *De bene esse*.

EXAMINED COPY. In English practice. A copy of a record or paper, sworn (by the party intending to use it), to have been examined with the original, being first prepared by the officer having custody of it. See *Copy*.

EXAMINER IN CHANCERY. An officer of the court of chancery, before whom witnesses are examined, and their testimony reduced to writing, for the purpose of being read on the hearing of the cause. *Cowell.* 2 *Daniell's Chanc. Pract.* 1053, (Perkins' ed.) *et seq.*

EXANNUAL ROLL. In old English practice. A roll into which (in the old way of exhibiting sheriff's accounts,) the illeivable fines and desperate debts were transcribed, and which was annually read to see what might be gotten. *Hale's Sheriff's Accounts*, 67. *Cowell*.

EXBRANCHIATURA. L. Lat. In forest law. A cutting off the branches of trees. *Fleta*, lib. 2, c. 41, § 5. This word is not noticed either by *Cowell*, *Blount*, or *Spelman*. Probably the same with *esbranchatura*, (q. v.)

EXCADENTILÆ. L. Lat. (*terræ excadentiales*.) In old European law. Escheats, or escheated lands. *Spelman. Fleta*, lib. 6, c. 1. *Co. Litt.* 13 a. *Cowell*, voc. *Escheat*.

EXCAMB. In Scotch law. To exchange. 6 *Bell's Ap. Cas.* 19. 22. Closely formed from the L. Lat. *excambiare*, (q. v.)

EXCAMBIARE, Excambire. L. Lat. In old English law. To exchange. *Spelman*.
Excambiator; an exchanger, a broker. *Cowell*.

EXCAMBION. In Scotch law. Exchange. 1 *Forbes' Inst.* part 2, p. 173.

EXCAMBIUM, Escambium, Cambium. L. Lat. In old English law. Exchange of lands. 4 Co. 121. The word im-

plied a condition and also a warranty. *Id. ibid.* The proper word in old deeds of exchange. *Perk. ch. 4, ss. 252, 253.* See old form in *West's Symboleog.* part 1, lib. 2, sect. 518.

Exchange of money. *Molloy de Jur. Mar. 313.*

A recompense or equivalent in value. 1 *Reeves' Hist.* 442, 447. 3 *Id.* 14. See *Escambium.*

EXCEPCION. L. Fr. An exception, or plea. *Britt. c. 48.*

EXCEPTA DIGNITATE REGALI. Lat. Saving the royal dignity. 1 *Bl. Com.* 205.

EXCEPTIO. Lat. [from *excipere*, to except or take out.] In the Roman law. An exception. In a general sense,—a judicial allegation opposed by a defendant to the plaintiff's action; (*judicialis quædam allegatio reo competens adversus actionem*). *Calv. Lex. Jur.* citing *Hotoman*.—A stop or stay to an action opposed by the defendant. *Cowell. Hallifax, Anal. b. 3, ch. 5.* Answering to the *defence* or *plea* of the common law.—An allegation and defence of a defendant, by which the plaintiff's claim or complaint is defeated, either according to strict law, or upon grounds of equity; (*omnis rei allegatio ac defensio, quâ intentio actoris vel ipso jure, vel ob æquitatem eliditur*). *Heinecc. Elem. Jur. Civ. lib. 4, tit. 13, § 1277.*

In a stricter sense,—the exclusion of an action that lay in strict law, on grounds of equity, (*actionis jure stricto competentis ob æquitatem exclusio*). *Heinecc. El. J. C. ub. sup.*—A kind of limitation of an action, by which it was shown that the action, though otherwise just, did not lie in the particular case. *Calv. Lex.* citing *Gædæus de Verb. Signif.*—A species of defence allowed in cases where, though the action, as brought by the plaintiff, was in itself just; yet it was unjust as against the particular party sued, (*licet ipsa persecutio, quâ actor experitur, justa sit, tamen iniqua sit adversus eum cum quo agitur*). *Inst. 4. 13. pr.*—A mode of defence to an action, consisting of facts, which although they did not, *ipso jure*, destroy the right of action, served to protect the defendant upon equitable grounds.* Thus, if a person, under the influence of fear, deception or mistake, made a promise to another which he ought not to have made, he was nevertheless bound according to the law, (*jure civili*, that is, according to the strict rule of

law,) to fulfil such promise, and was liable to an action to enforce it; but as it was unjust that he should be condemned, he was allowed to plead the facts of the case by way of *exception*, so as to defeat the action, (*ad impugnandam actionem*). *Inst. 4. 13. 1.* The exception in these cases was called *exceptio metus causa, exceptio doli mali, &c.* *Id. ibid.* See *Dig. 44. 1 & 4. 1 Mackeld. Civ. Law, 207, § 204. Id. 209, § 206, and nota.*

These exceptions of the Roman law were originally *exceptions*, in the literal meaning of the term, that is, they were allowed by the prætor on the ground that the facts of the particular case constituted, in equity, an *exception* to the general rule of law, of which the defendant might avail himself.* 1 *Mackeld. Civ. Law, ub. sup.* In the time of Justinian, however, they had lost this original signification; nor has this sense of *exceptio* been revived in modern times. And yet it may be remarked that the whole of the modern system of equitable relief is essentially a system of *exception*. One of the most eminent of American statesmen and jurists has observed that the great and primary use of a court of equity is to give relief in extraordinary cases, which are *exceptions* to general rules; and that, though the principles by which that relief is governed are now reduced to a regular system, it is not the less true that they are, in the main, applicable to *special* circumstances, which form *exceptions* to general rules. *Federalist, No. 83, by Hamilton.*

EXCEPTIO. Lat. In modern civil law. Any objection of a defendant by which he alleges a *new fact*, in order to defend himself against the action; as distinguished from a simple *denial* of the facts alleged by the plaintiff. 1 *Mackeld. Civ. Law, 207, § 204.* Answering to the *plea in confession and avoidance*, in the common law.

EXCEPTIO. Lat. [Fr. *exception*.] In the early common law. The defendant's answer to the plaintiff's declaration, (*narratio, or intentio*); the first pleading in an action on the part of the defendant; a plea. Defined by Bracton to be *actionis elisio, per quam actio perimitur vel differtur*; (the defeating of an action, by which the action is either destroyed or deferred). *Bract. fol. 399 b.* A term very frequently employed by this writer, who devotes an entire division of his great work (the fifth tract of the fifth book, *De exceptionibus*.)

to the consideration of this kind of pleading. See *Fleta*, lib. 6, c. 36. It is obviously borrowed, with its leading divisions, from the Roman law, (*supra*.) but is considerably modified and enlarged in its application to English jurisprudence. *Id. ibid.* *Steph. Plead.* Appendix, Note (85).

Exceptio was also used in the canon law, to denote the second pleading in an action. *Corv. Jus. Canon.* lib. iii. tit. 32.

Exceptio ejus rei cuius petitur dissolutio nulla est. A plea of that matter, the dissolution of which is sought [by the action] is null, [or of no effect]. *Jenk. Cent.* 37, case 71.

Exceptio nulla est versus actionem quæ exceptionem perimit. There is [can be] no plea against an action which destroys [the matter of] the plea. *Jenk. Cent.* 106, case 2.

Non potest adduci exceptio ejusdem rei, cuius petitur dissolutio. A plea of the same matter, the dissolution of which is sought [by the action] cannot be brought forward. *Bacon's Max.* 6, reg. 2. It were impertinent and contrary in itself, for the law to allow of a plea in bar of such matter as is to be defeated by the same suit; for it is included, otherwise a man should never come to the end and effect of his suit, but be cut off in the way. *Id. ibid.* See *Non valet exceptio*, &c.

EXCEPTIO. L. Lat. In old practice. An exception taken by a party, at the trial of a cause. *Stat. Westm.* 2, c. 31. *Fleta*, lib. 6, c. 55, § 8.

An objection to a juror; a challenge. *Id.* lib. 4, c. 8.

EXCEPTIO. L. Lat. In old conveying. An exception in a deed, release, &c. *Exceptio semper ultimo ponenda est.* An exception should always be put last. 9 *Co.* 53.

EXCEPTIO. Lat. In general law and practice. An exception; the taking of a case out of the operation of a rule.

Exceptio firmat regulam in casibus non exceptis. The exception confirms or strengthens the rule, in the cases not excepted. *Bac. Aph.* 17. *Exceptio firmat legem in casibus non exceptis.* *Bac. Arg. Jurisd.* of Marches, *Works*, iv. 270. *Exceptio firmat regulam in rebus non exceptis.* 10 *Mod.* 115, arg.

Exceptio probat regulam (de rebus non exceptis). The exception proves the rule (so far as concerns things not excepted). 11 *Co.* 41.

Exceptio quæ firmat legem, exponit legem. An exception which confirms the law, explains the law. 2 *Bulstr.* 189.

EXCEPTIO AD BREVE PROSTERNENDUM. L. Lat. [L. Fr. *exceptio pur breve abatere*.] In old pleading. An exception or plea to overthrow or abate the writ; a plea in abatement. *Bract.* fol. 413. *Britt.* c. 48. *Steph. Pl.* Appendix, Note (22).

EXCEPTIO DILATORIA. Lat. In the civil law. A dilatory exception; called also *temporalis*, (temporary); one which delayed the action (*quæ differt actionem*), or defeated it for a time, (*quæ ad tempus nocet*), and created delay, (*et temporis dilationem tribuit*); such as an agreement not to sue within a certain time, as five years. *Inst.* 4. 13. 10. See *Dig.* 44. 1. 2. 4. *Id.* 44. 1. 3.

In the common law. A dilatory plea. *Bract.* fol. 240, 399 b, 421 b. *Fleta*, lib. 5, c. 14, § 1. See *Dilatory plea*.

EXCEPTIO DOLI MALL. Lat. In the civil law. An exception or plea of fraud. *Inst.* 4. 13. 1, 9. *Dig.* 44. 4. *Bract.* fol. 100 b.

EXCEPTIO IN FACTUM. Lat. In the civil law. An exception on the fact; an exception or plea founded on the peculiar circumstances of the case. *Inst.* 4. 13. 1. *Calv. Lex.*

EXCEPTIO JURISJURANDI. Lat. In the civil law. An exception of oath; an exception or plea that the matter had been sworn to. *Inst.* 4. 13. 4. This kind of exception was allowed where a debtor, at the instance of his creditor, (*creditor deferente*), had sworn that nothing was due the latter, and had notwithstanding been sued by him. *Id. ibid.*

EXCEPTIO METUS. Lat. In the civil law. An exception or plea of fear or compulsion. *Inst.* 4. 13. 1, 9. *Dig.* 44. 4. *Bract.* fol. 100 b. Answering to the modern plea of duress. See *Duress*.

EXCEPTIO PACTI CONVENTI. Lat. In the civil law. An exception of compact; an exception or plea that the plaintiff had agreed not to sue. *Inst.* 4. 13. 3.

EXCEPTIO PECUNIÆ NON NUMERATÆ. Lat. An exception or plea of money not paid; a defence allowed a party where he was sued on a promise to repay money that he had never received. *Inst.* 4. 13. 2. See *Pecunia non numerata*.

EXCEPTIO PEREMPTORIA. Lat. In the civil law. A peremptory exception;

called also *perpetua*, (perpetual); one which forever destroyed the subject matter or ground of the action, (*quæ semper rem de qua agitur perimit*); such as the *exceptio doli mali*, the *exceptio metus*, &c. *Inst.* 4. 13. 9. See *Dig.* 44. 1. 3. And see *Peremptory exception*.

In the common law. A peremptory plea; a plea in bar. *Bract.* fol. 240, 399 b.

EXCEPTIO REI JUDICATÆ. Lat. In the civil law. An exception or plea of matter adjudged; a plea that the subject matter of the action had been determined in a previous action. *Inst.* 4. 13. 5. *Dig.* 44. 2.

This term is adopted by Bracton, and is constantly used in modern law, to denote a defence founded upon a previous adjudication of the same matter. *Bract.* fol. 100 b, 177. 2 *Kent's Com.* 120, and note. *Story's Conf. of Laws*, § 584. A plea of a former recovery, or judgment. See *Res judicata*.

EXCEPTIO REI VENDITÆ ET TRADITÆ. Lat. In the civil law. An exception or plea that the article claimed in an action was sold and delivered to the defendant.* 1 *Mackeld. Civ. Law*, 315, § 291. *Dig.* 21. 3. *Calv. Lex.*

EXCEPTIO TEMPORIS. Lat. In the civil law. An exception or plea of time, or lapse of time; that is, that the action had not been brought within the time limited by law.* 1 *Mackeld. Civ. Law*, 200, § 200. Answering to the modern plea of the statute of limitations. See *Limitation*.

EXCEPTION. In practice. An objection in writing, taken in the course of an action; as to bail or security put in by one of the parties; to an opinion of a judge expressed on the trial of a cause; or to a pleading or master's report in chancery. See *infra*.

EXCEPTION TO BAIL. In practice. An objection, on the part of the plaintiff, to the special bail put in by a defendant in an action at law, on the ground of their insufficiency. 1 *Tidd's Pr.* 255. 1 *Arch. Pr.* 105. It is made by endorsing the exception on the bail-piece on file, and giving written notice of such exception to the defendant or his attorney. *Id. ibid.*

EXCEPTION ON TRIAL. In practice. An exception taken by the counsel of a party, on the trial of a cause, to a decision made by the judge in the course of the trial, or to an opinion expressed or di-

rection given in his charge to the jury; and usually for the purpose either of moving for a new trial, or of bringing a writ of error. *Steph. Pl.* 89. 2 *Tidd's Pr.* 862. 1 *Arch. Pr.* 210. The exception is made orally, and a minute or note of it taken in writing on the trial; and it is afterwards formally entered and engrossed in the shape of a *bill of exceptions*. See *Bill of exceptions*.

EXCEPTION. In equity practice. A formal written statement of objections to a pleading, or master's report.* The usual grounds of exception to a pleading are scandal, impertinence and insufficiency. 1 *Daniell's Chanc. Pr.* (Perkins' ed.) 397, 401, 402. 2 *Id.* 872, 1490. *Mitford's Chanc. Pl.* 315, (376, Moulton's ed. and notes). *Story's Eq. Pl.* § 864.

EXCEPTION. In conveyancing. A clause in a deed whereby the grantor, lessor, &c. excepts something out of that which he has before granted, (as ground out of a manor, a room out of a house, &c.) by which means it is severed from the things granted, and does not pass by the deed.* *Co. Litt.* 47 a. *Shep. Touch.* 77. The apt words of exception in Latin, were *exceptis, salvo, præter*, and the like.

The distinction between an exception and a reservation is, that an *exception* is always of part of the thing granted, and of a thing *in esse*; a *reservation* is always of a thing not *in esse*, but newly created or reserved out of the land or tenement demised. *Co. Litt.* 47 a. 4 *Kent's Com.* 468. It has been also said that there is a diversity between an exception and a saving, for an exception exempts clearly, but a saving goes to the matters touched, and does not exempt. *Plowd.* 361.

EXCEPTIS. Lat. In old conveyancing. Excepting; excepted. One of the apt words for denoting an exception in a deed. *Exceptis præ-exceptis*; excepting what was before excepted; except as above excepted. *Town's Pl.* 21.

EXCEPTOR. L. Lat. In old English law. A party who excepted, or put in a plea (*exceptio*). *Fleta*, lib. 6, c. 39, § 2.

EXCESSIVE DAMAGES. In practice. Damages, given by the verdict of a jury, which are unreasonably great in amount, and not warranted by law; outrageous damages. One of the grounds for granting new trials. See 3 *Graham & Waterman on New Trials*, ch. 13, sec. 4, pp. 1127—1164.

EXCESSUS. L. Lat. In old English law. Excess; transgression; violation of engagements. *Mag. Cart. Johan.* c. 61.

EXCHANGE. [L. Lat. *excambium*; L. Fr. *échange*; Span. *cambio*.] In conveying. A mutual grant of equal interests in lands, the one in exchange, or consideration for the other; one of the species of primary or original conveyances at common law, formerly of very frequent occurrence. The estates exchanged must be *equal* in quantity of interest, as fee simple for fee simple, a lease for twenty years for a lease for twenty [or thirty] years, and the like, but the quantity of value is immaterial. The word "*exchange*" must always be used in this conveyance, it being so individually requisite and appropriated by law to this case, that it cannot be supplied by any other word, or expressed by any circumlocution. *Shep. Touch.* 289, 294. 2 *Bl. Com.* 323. *Litt. sect.* 64, 65. *Co. Litt.* 50, 51. 1 *Steph. Com.* 477.

EXCHANGE OF GOODS. A commutation, transmutation or transfer of goods for other goods, as distinguished from *sale*, which is a transfer of goods for money. 2 *Bl. Com.* 446. 2 *Steph. Com.* 120.

EXCHEQUER. [L. Fr. *eschiquier*, *eschiquer*, *escheker*; O. Sc. *checker*; L. Lat. *scaccarium*; from Ital. *scacco*, a chess board, or Germ. *schatz*, a treasure.] An establishment of very remote antiquity in England, consisting of two divisions; the first being the office of the receipt of the exchequer, for collection of the royal revenue; the second being a court for the administration of justice. 4 *Inst.* 103. 2 *Steph. Com.* 544. It is said to be called the exchequer from the *checked cloth*, resembling a chess board, which covers [or once covered] the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 *Bl. Com.* 44. As an office of revenue, it has been newly organized by statute 4 & 5 Will. IV. c. 15. 2 *Steph. Com.* 544. The exchequer is said to have been originally divided into eight distinct courts. 2 *Chitt. Gen. Pract.* 389.

EXCHEQUER, COURT OF. One of the three superior courts of law in England, (inferior, however, in rank to both the Queen's Bench and the Common Pleas); originally intended principally to order the revenues of the crown, and to recover the king's debts and duties, but which has long possessed the character of an ordinary court

of justice between subject and subject. 3 *Bl. Com.* 44. 3 *Steph. Com.* 400, 401. It was formerly a court both of law and equity, but the equitable jurisdiction was taken away by statute 5 Vict. c. 5, and it is now, therefore, a court of revenue and a court of common law only. In the former capacity, it ascertains and enforces, by proceedings appropriate to the case, the proprietary rights of the crown against the subjects of the realm; in the latter, it administers redress between subject and subject, in all actions whatever, except real actions. It is a court of record, and its judges are five in number, consisting of one chief and four puisne *barons*, as, in this court, the judges are termed. *Id. ibid.* 2 *Id.* 544, note.

EXCHEQUER BILLS. Bills of credit issued in England by authority of parliament. *Brande.* Instruments issued at the exchequer, under the authority, (for the most part,) of acts of parliament passed for the purpose, and containing an engagement, on the part of the government, for repayment of the principal sums advanced with interest. 2 *Steph. Com.* 586.

EXCHEQUER CHAMBER, *Court of.* A court of appeals in England, established to correct the errors of the three superior courts of common law, (the Queen's Bench, Common Pleas and Exchequer,) consisting of any two of these courts, sitting as a court of error to revise the judgment of the third. This is the modern constitution of the court by statutes 11 Geo. IV. and 1 Will. IV. c. 70, s. 8. 3 *Steph. Com.* 419. It also exists as a court of mere debate, such causes from the other courts being sometimes adjourned into it, as the judges, upon argument, find to be of great weight and difficulty, before any judgment is given upon them in the court below. *Id. ibid.* 3 *Bl. Com.* 56.

EXCIPERE. L. Lat. In old English practice. To plead. *Excipi*; to be pleaded. *Fleta*, lib. 4, c. 16, § 2. *Ordo excipendi*; the order of pleading. *Id.* lib. 2, c. 54.

EXCISE. [from Belg. *accise*, tribute.] An inland imposition upon commodities, charged in most cases on the manufacturer. 2 *Steph. Com.* 579.—A duty or tax laid on certain articles produced and consumed at home. *Wharton's Lex.* 1 *Bl. Com.* 318. It includes also the duties on licenses and auction sales. 2 *Steph. Com.* 581. 3 *Id.* 314.—An inland imposition, paid sometimes upon the consumption of the com-

modity, or frequently upon the retail sale, which is the last stage before the consumption. *Story on the Const.* § 953. *Andrews, Rev. Laws*, § 133.

EXCLUSA. L. Lat. In old English law. A sluice; a structure for carrying off water, especially such as is dammed or pent up, as in a mill pond or fish pond. *Cowell. Reg. Orig.* 96. In old English, a *ocluse*. *Spelman.*

In old European law. A place in a stream, made narrow for the purpose of fishing; a wear. *Spelman. Fleta*, lib. 4, c. 27, § 4.

EXCLUSAGIUM, Slusagium. L. Lat. In old records. A sluice or sluicage. *Cowell. 1 Mon. Angl.* 398, 868, cited *ibid.*

EXCOMMENCE. L. Fr. [Lat. *excommunicatus*.] Excommunicated. *Litt. sect.* 201. *Co. Litt.* 133 b. The old form was *excommence*. *Conf. Cartar.* 25 *Edw. I.*

EXCOMMENCEMENT. L. Fr. [L. Lat. *excommunicatio*.] Excommunication. *Britt. c.* 49. *Bro. Abr.* Excommencement. *Stat. 23 Hen. VIII. c.* 3. *Gilb. C. Pleas*, 202.

EXCOMMUNICATION. [L. Lat. *excommunicatio*; from *ex*, from, and *communio*, communion.] In English law. An ecclesiastical interdict or censure, by which a man is cut off from communion with his church. It is described to be two-fold, the less and the greater. The less excommunication is that by which a party is excluded from the participation of the sacraments; the greater proceeds further, and excludes him not only from these, but also from the company of all Christians. *Co. Litt.* 133 b. 3 *Bl. Com.* 101. Formerly, too, an excommunicated man was disabled to do any act, that was required to be done by a *probus et legalis homo*. He could not serve upon juries; could not be a witness in any court, and, what was worst of all, could not bring an action, either real or personal, to recover lands or money due to him. But now, by statute 53 Geo. III. c. 127, s. 3, no person who shall be pronounced excommunicate, shall incur thereby any civil penalty or incapacity whatever, save such imprisonment, not exceeding six months, as the court so excommunicating such person shall pronounce. 3 *Steph. Com.* 721. 3 *Bl. Com.* 102.

EXCUSABLE HOMICIDE. In criminal law. That kind of homicide which the law excuses from the guilt of felony, though in strictness it judges it deserving of some

little degree of punishment. It is of two kinds, homicide *per infortunium*, by misadventure; and homicide *se defendendo*, in self-defence, upon a sudden affray. 4 *Bl. Com.* 182. 4 *Steph. Com.* 101. See *Homicide*.

EXCUSARE. Lat. [from *ex*, from, and *causa*, cause.] In the civil law. To excuse; to relieve or release from a duty or obligation, for sufficient cause shown. *A tutela excusatur*; are excused from guardianship. *Dig.* 27. 2. 41.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. That excuses or extenuates an offence in capital cases, which does not operate the same in cases of civil injuries. *Bacon's Max.* 36, reg. 7. "In capital causes, in *favorem vite*, the law will not punish in so high a degree, except the malice of the will and intention appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong-doer; and, therefore, the law makes a difference between killing a man upon malice forethought, and upon present heat. But if I give a man slanderous words, whereby I damnify him in his name and credit, it is not material whether I use them upon sudden choler and provocation, or of set malice, but, in an action upon the case, I shall render damages alike." *Id. ibid.*

EXCUSATIO. Lat. [from *excusare*, q. v.] In the civil law. Excuse; an excuse, an exemption or release from duty or obligation, for sufficient cause shown. See *Dig.* 27. 1, *De excusationibus*. Herennius Modestinus, the Greek writer from whose work this title is chiefly compiled, calls it *reputatio*. *Cod.* 5. 62. *Id.* 10. 47. *Id.* 10. 64.

A ground, cause or reason for exemption from duty. *Dig.* 27. 1.

EXCUSATOR. L. Lat. In old English law. An excuser; one who offered the excuse of another in court. *Fleta*, lib. 6, c. 13, § 1. Such person was not properly an *excusator*. *Id. ibid.*

EXCUSE. [Lat. *excusatio*, (q. v.); Gr. *reputatio*.] A cause or ground of exemption or relief from some duty, obligation or liability.

A matter alleged and presented to a court, as a ground or cause for some exemption or relief from duty, prayed for by a party.

This word combines both the ideas presented by its Greek and Latin equivalents,—release for cause, (*ex causa*), and such release prayed for. The Greek is literally a requesting to be let off, (*ῥησις*, off, and *δεσποσις*, to request.)

EXCUSSIO. Lat. [from *excutere*, to shake out, to search.] In the civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated *discussion*, (q. v.)

In old English law. Rescue or rescous. *Spelman*.

EXCUTERE. Lat. In the civil law. To search thoroughly; to prosecute a remedy against one to the uttermost, especially against a principal debtor; to search *ad peram et sacculum*, to the last farthing. *Calv. Lex*.

EXECUCYON. L. Lat. Execution. *Britt.* fol. 1 b.

EXECUTE. [Lat. *exequi*, *exsequi*, from *ex*, from, and *sequi*, to follow.] To complete, finish, or perfect; to follow out or carry out; to make effectual or operative.* A deed is not complete, and has no operation or effect, until *executed*, that is, signed, sealed and delivered by the party making it. See *Execution*.

To perform or fulfil; to comply with, as a contract.

To carry into effect; to make effectual; as by complying with, or acting under a legal order or authority; to obey the writ or mandate of a court. See *Execution*.

To carry into effect a sentence of death; to inflict the punishment of death. See *Id.*

A statute is said to *execute* a use, where it transmutes the equitable interest of *cestuy que use* into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to uses or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 *Steph. Com.* 339.

EXECUTED. Completed; made; done; carried into full effect; performed; complied with; obeyed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. The opposite of *executory*. "Things executed and done" are distinguished by Finch, from things "executory and to do." *Law*, b. 1, c. 3, num. 89. See *infra*, and see *Executory*.

EXECUTED CONSIDERATION. A consideration performed prior to the pro-

mise upon which it is founded, and which, to be valid, must have been at the precedent request of the promiser.* As if I bail a man's servant, at the master's request, and the latter afterwards promises to indemnify me; this is an executed consideration.* 2 *Steph. Com.* 113.

EXECUTED CONTRACT. A contract which transfers the possession of a thing, together with the right; a contract which conveys a chose in possession, as distinguished from a chose in action. 2 *Bl. Com.* 443. 2 *Steph. Com.* 112.—A contract where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made; as where an article is sold and delivered, and payment therefor is made on the spot. *Story on Contracts*, § 18.

EXECUTED ESTATE. An estate in possession, by which a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance or contingency. 2 *Bl. Com.* 162.

EXECUTED REMAINDER. A remainder by which a present interest passes to the party, though to be enjoyed in *future*. 2 *Bl. Com.* 168. See *Vested remainder*.

EXECUTED TRUST. A trust is so called in respect to its creation, when the transaction by which it is created is complete, and in respect to its execution, when no further act is necessary to be done by the trustee to give effect to it.* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. See 1 *White's Lead. Eq. Cases*, 1—31, and *Am. ed. note*.

EXECUTED USE. A use to which the legal possession or estate is transferred or annexed by statute; a use transferred into possession.* 2 *Crabb's Real Prop.* 478, § 1654. 1 *Steph. Com.* 339.

EXECUTED WRIT. In practice. A writ carried into effect by the officer to whom it is directed. The term *executed*, applied to a writ, has been held to mean *used*. Lord Hardwicke, *Ambl.* 61.

EXECUTIO. Lat. [from *exequi*, or *exsequi*, to follow up.] The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration. See *Executio bonorum*.

EXECUTIO. L. Lat. In old practice. Execution; the final process in an action. See *Execution*.

Executio est finis et fructus legis. Exe-

cution is the end and fruit of the law. *Co. Litt.* 289. An execution is the end of the law. It gives the successful party the fruits of his judgment. *Marshall, C. J. 9 Peters' R.* 28. It is the *end* in both of the English senses of the word; being not only the *final* proceeding in an action, but the *object* also for which the action is prosecuted, putting the party into actual possession of the lands, goods, or money to which he is entitled.*

Executio juris non habet injuriam. The execution of the law does not work a wrong. *2 Inst.* 482. The law will not, in its executive capacity, work a wrong. *Broom's Max.* 57, [95]. The imprisonment of a party in the execution, and by virtue of lawful process, is not such an act as can be pleaded in avoidance of a contract entered into while under its coercion.* *Id.*

EXECUTIO BONORUM. *L. Lat.* In old English law. Management or administration of goods. *Ad ecclesiam et ad amicos pertinebit executio bonorum*; the execution of the goods shall belong to the church and to the friends of the deceased. *Bract.* fol. 60 b.

EXECUTION. [*Lat. executio*; *L. Fr. executyon.*] The completion of an act or proceeding, by which it is rendered operative or effectual; a following out or carrying into effect; an enforcement. See *infra*.

EXECUTION. In practice. The act or mode of putting the sentence of the law in force, or of carrying into effect the judgment or decree of a court.* *3 Bl. Com.* 412. A judicial writ, (otherwise termed *final process*;) founded on a judgment obtained in a civil court, and issued in behalf of the party recovering such judgment, for the purpose of obtaining the satisfaction or full benefit of it.* Called by Lord Coke "the life of the law," and "the fruit and life of every suit." *5 Co.* 89, 91. There are various kinds of this process, but the two most usual in practice are the *feri facias*, and the *capias ad satisfaciendum*. See *Fieri facias, Capias ad satisfaciendum, Levare facias, Extendi facias, Elegit, Habere facias possessionem, De retorno habendo*.

EXECUTION. In criminal law. The carrying into effect the sentence of the law, by the infliction of capital punishment. *4 Bl. Com.* 403. *4 Steph. Com.* 470.

EXECUTION. In conveyancing. The formality of signing, sealing and delivery by the party making a deed, or of signing

and publication by the party making a will, in the presence of witnesses; by which it is rendered complete and operative.* *4 Kent's Com.* 450. *Id.* 513—516, and notes. *2 Bl. Com.* 376.

EXECUTOR. *L. Lat.* [from *exequi*, or *exsequi*, to follow up, execute or perform.] In old English law. A person appointed or authorized to execute or perform a duty or trust; especially to manage and dispose of the property or estate of a deceased person; an executor.*

Executor à lege constitutus; an executor appointed by law; the ordinary of the diocese. *1 Williams on Exec.* 185.

Executor ab episcopo constitutus, or *executor dativus*; an executor appointed by the bishop; an administrator to an intestate. *Id. ibid.*

Executor à testatore constitutus; an executor appointed by a testator. *Id. ibid.* Otherwise termed *executor testamentarius*; a testamentary executor. *Id. ibid.* This is the modern sense of the word, commonly expressed in the old books by the single word, *executor*. *Glanv.* lib. 7, c. 6. *Bract.* fol. 20, 61. *Et residuum relinquatur executoribus ad faciendum testamentum defuncti*; and the residue shall be left to the executors, to do the will of the deceased. *Mag. Chart. Joh.* c. 26. *Id.* *9 Hen. III.* c. 18.

Executor testamenti; executor of a will. *Fleta*, lib. 2, c. 70, § 5.

EXECUTOR. [*L. Lat. executor*; *L. Fr. exécutour.*] A person appointed by a testator, in his last will and testament, to carry it into effect or *execution* after his decease, and to dispose of his property according to the tenor of the will.* *Wood's Inst.* 310. *Cowell. Blount. Whishaw.*—A person appointed by a testator, and whose appointment is confirmed by the proper court, to execute his will, and to represent him in his personal rights and liabilities. *Brande.* He to whom another man commits by will the execution of his last will and testament. *2 Bl. Com.* 503. See *1 Williams on Exec.* 185, *et seq.*

This word has been adopted, without change, from the Latin of the earliest writers on English law. *Glanv.* lib. 7, c. 6. *Bract.* fol. 20, 61. *Mag. Chart. Joh.* c. 26. *Mem. in Seacc. H.* 5 *Edw. I. Stat. Westm.* 2, c. 19. See *supra*. Lord Hardwicke, in *Androvin v. Poilblanc*, calls it a "barbarous term," unknown to the civil law, the proper term in that law, as

to goods, being *hæres testamentarius*. 3 *Atk.* 299, 301.

EXECUTOR DE SON TORT. L. Fr. An executor of his [own] wrong; an executor by his own wrongful act.* A stranger who takes upon himself to act as executor, without any just authority, (as by intermeddling with the goods of the deceased,) is so called, and is liable to all the trouble of an executorship, without any of the profits or advantages. 2 *Bl. Com.* 507. But merely doing acts of necessity or humanity, as locking up the goods, or burying the corpse of the deceased, will not amount to such an intermeddling, as will charge a man as executor of his own wrong. *Id. ibid.* See 1 *Williams on Exec.* 210, *et seq.*

EXECUTOR. Lat. In the civil law. A ministerial officer who executed or carried into effect the judgment or sentence in a cause. *Calv. Lex. Jur.* citing *Præteius* and *Brissonius*. Otherwise called *executor litis*. *Inst.* 4. 6. 24, 25.

EXECUTORY. To be executed or performed; relating to the future; depending upon a future event, or act. See *infra*.

EXECUTORY CONSIDERATION. A consideration which is to be performed after the making of the promise on which it is founded.* 2 *Steph. Com.* 113.

EXECUTORY CONTRACT. A contract which is to be executed at some future time, and which conveys only a chose in action. 2 *Bl. Com.* 443. 2 *Ken's Com.* 511, 512, note. See *Executed contract*.

EXECUTORY DEVISE. In a general sense,—a devise of a future interest in lands, not to take effect at the testator's death, but limited to arise and vest upon some future contingency. 1 *Fearne on Remainders*, 382. A disposition of lands by will, by which no estate vests at the death of the deviser, but only on some future contingency.* 2 *Bl. Com.* 172.

In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law.* 4 *Ken's Com.* 263. 1 *Steph. Com.* 564.—A limitation by will, of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 *Powell on Dev.* (by Jarman,) 237. *Lewis on Perpetuity*, 71, 72.

EXECUTORY ESTATE. An estate depending upon some future circumstance

or contingency, which must happen before any interest passes.* 2 *Bl. Com.* 162.

EXECUTORY REMAINDER. The same as a contingent remainder. See *Contingent remainder*.

EXECUTORY TRUST. A trust is so called when the transaction by which it is created is only in *feri*, or rests in covenant; or where some further act is necessary to be done by the author of the trust, or the trustee, to give effect to it.* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. 1 *White's Lead. Eq. Cases*, 18.

EXECUTOUR. L. Fr. An executor. *Britt.* c. 28, 64.

EXECUTRESS. A female executor. *Hardr.* 165, 473. See *Executrix*.

EXECUTRIX. L. Lat. and Eng. A female executor. *Yearb.* P. 10 Edw. III. 2. See *Executor*. Sometimes translated, in the old books, *executress*, (q. v.)

EXECUTRY. In Scotch law. The moveable estate of a person dying, which goes to his nearest of kin. So called, as falling under the distribution of an executor. *Bell's Dict.*

EXEMPLIFICATION. [L. Lat. *exemplificatio*; from *exemplum*, a copy, and *facere*, to make.] A certified transcript, under seal, of a record.* An exemplification of letters patent is a certified transcript of the enrolment, under the great seal. *Cowell. Burton's Real Prop.* 160. 1 *Archb. Pr.* 159, 162. The term is confined to matters of record. 3 *Inst.* 173. 5 *Co.* 52, *Page's Case*. *Cowell*. See *Authentication*.

EXEMPLUM. Lat. In the civil law. A copy; a copy of a writing. *Dig.* 42. 1, 33. *Calv. Lex.*

EXEMPLUM. Lat. An example; an instance. *Exempla illustant non restringunt legem*. Examples illustrate the law; do not restrict it. *Co. Litt.* 24 a.

EXEMPT. [from Lat. *eximere*, to take out.] To free or relieve from some service, duty or requisition, to which others are subject; as from militia duty. *Act of Congress*, May 8, 1792, sess. 1, ch. 33, sec. 2.

EXEQUATUR. Lat. (Let him execute or perform his office.) The official recognition of a person in the character of consul or commercial agent, authorizing him to exercise his power. *Wharton's Lex.*

EXEQUIL. Lat. In old English law. To execute. *Fleta*, lib. 1, c. 26, § 3. *Id.* lib. 2, c. 64, § 19.

EXERCERE. Lat. In the civil law. To employ; to use in the course of business, as a vessel. *Dig.* 4. 9. 2.

To keep, as a tavern, (*caupona*) or stable (*stabulum*). *Id.* 4. 9. 5.

EXERCITALIS. L. Lat. [from *exercitus*, an army.] In feudal and old European law. A soldier; a vassal or feudatory. *Spelman. Calv. de Verb. Feud.*

EXERCITOR NAVIS. Lat. In the civil law. The employer of a vessel; the person who sent a vessel to sea at his own risk, and received all her earnings; (*ad quem quotidianus navis quæstus pertinet; ad quem obventiones et redditus omnes perveniunt*). *Inst.* 4. 5. 3. *Id.* 4. 7. 2. *Dig.* 14. 1. 1. 15. *Id.* 4. 9. 6. 7. 3 *Kent's Com.* 161, note. *Molloy De Jur. Mar.* 243. *Story on Agency*, §§ 36, 317. The exercitor appointed the master, and was bound for his acts *ex contractu*, and *ex delicto*. *Loccen. de Jur. Mar.* lib. 3, c. 8, sect. 3. *Voet. Com. ad Pand.* 14. 1. 7. 3 *Kent's Com.* *ub. sup.* *Story on Agency*, § 163. This word corresponds with the Belg. and Germ. *reeder* and *schiffs-freunde*, and the English *ship's-husband*. *Loccen. de Jur. Mar.* lib. 3, c. 8, sect. 2.

EXERCITORIA ACTIO. Lat. In the civil law. An action which lay against the employer of a vessel, (*exercitor navis*), for the contracts made by the master. *Inst.* 4. 7. 2. *Dig.* 14. 1. *Cod.* 4. 25. 3 *Kent's Com.* 161.

EXERCITUALE. L. Lat. [from *exercitus*, an army.] In old English law. A heriot. *LL. Edw. Conf.* 1. *Cowell.* So called, as being anciently paid only in arms or military accoutrements. *Id.* See *Heriot*.

EXERCITUS. Lat. In old European law. An army; an armed force. A collection of thirty-five men and upwards. *LL. Inæ, apud Spelman.*

A gathering of forty-two armed men. *L. Boior.* tit. 3, c. 8.

A meeting of four men. *LL. Longobard.* lib. 1, tit. 17, c. 1. *Spelman.*

As to the meaning of this term in the Roman law, see *Grotius de Jur. Bell.* lib. 2, c. 16, sect. 3.

EXFESTUCARE. L. Lat. [from *ex*, from or off, and *festuca*, a wand.] In feudal and old European law. To divest one's self of the possession of an estate, honor, dignity or any other thing; anciently expressed by the ceremony of delivering a wand or staff. *Spelman. Calv. de Verb. Feud.*

EXFREDIARE. L. Lat. [from *ex*, priv. and Sax. *frede*, *frith*, peace.] In old English law. To break the peace; to commit open violence. *Cowell. LL. Hen.* 1. c. 31, cited *ibid.*

EXHÆREDARE. Lat. [from *exhæres*, q. v.] In the civil law. To disinherit; to exclude from inheriting. *Inst.* 2. 13. pr. *Dig.* 28. 2. 1, 2. In Scotch law, to *exheredate*, (q. v.)

EXHEREDATE. In Scotch law. To disinherit; to exclude from inheriting. 1 *Kames' Equity*, 247.

EXHÆREDATIO. Lat. [from *exhæredare*, q. v.] In the civil law. Disinheritance; a disinheriting. *Inst.* 2. 23. tit. *Bract.* fol. 383. An exclusion from the lawful inheritance. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 13, § 528.

In the common law. Disinheritance; an injury done to one who has the inheritance, particularly to a remainder-man or reversioner. See *Ad exhæredationem*.

EXHÆRES. Lat. [from *ex*, priv. and *hæres*, an heir.] In the civil law. One who is excluded from being an heir; a person disinherited. *Inst.* 2. 13, pr. A child was disinherited by the following form of words: *Titius filius meus exhæres esto*; let Titius, my son, be disinherited. *Id. ibid.* Adopted by Bracton. *Bract.* fol. 383.

EXHIBERE. Lat. [from *ex*, out, and *habere*, to have.] In the civil law. To have out; to show openly; to exhibit; to present or produce a thing, so that it may be seen and handled. *Calv. Lex.* citing *Goedanus. Exhibere est præsentiam corporis præbere*; to exhibit is to furnish the presence of the body; to present a thing or person corporeally. *Dig.* 50. 16. 22. *Exhibet qui præstat ejus de quo agitur præsentiam*; he exhibits who furnishes the presence of that which [or him who] is the subject of the action. *Id.* 50. 16. 246.

This was a common word in interdicts, and is otherwise variously defined in the Digests, according to the subject. Thus, where a person was the subject of the action,—*Exhibere est in publicum producere, et videndi tangendique hominis facultatem præbere*; *proprie autem exhibere est extra secretum habere*; to exhibit is to produce in public, and to give an opportunity of seeing and touching the person; but properly to exhibit is *to have out of secrecy*. *Dig.* 43. 29. 2. 8. Where a will was the subject,—*Exhibere est materia ipsius ap-*

prehendendæ copiam facere; to exhibit is to give the opportunity or means of taking hold of the subject-matter itself. *Dig.* 43. 5. 8. 8. And generally, under the title of *Actio ad exhibendum*,—*Exhibere est facere in publico potestatem, ut ei qui agat experiundi sit copia*; to exhibit is to give a power in public, in order that he who sues may have the means of trying the subject. *Dig.* 10. 4. 2.

To EXHIBIT. [Lat. *exhibere*.] In practice. To present or show in legal form; to present to a court; to produce or show in or before a court or judicial officer.* See *Exhibere*, *Exhibit*.

EXHIBIT. [Lat. *exhibitum*, (from *exhibere*, q. v.) shown to.] In practice. Any writing which, on the examination of a witness before an examiner, or commissioner, is *exhibited* or *shown* to the witness to be proved, and on the back of which, the examiner or commissioner certifies that such writing was *shown* to the witness, at the time of his examination, and by him sworn to. *Jacob. Gray's Chanc. Pr.* 98. Where there are several, they are generally distinguished by the letters of the alphabet, as "Exhibit A," "Exhibit B," &c.

EXHIBITIO BILLÆ. L. Lat. (The exhibition of the bill.) In old practice. A phrase formerly used in pleading, and generally equivalent to "*the commencement of the suit*;" the suit, (where the proceedings were by bill,) being anciently commenced by the *exhibition* of such a *bill* to the court.

EXIGENT, or EXIGI FACIAS. L. Lat. In English practice. A judicial writ made use of in the process of outlawry, commanding the sheriff to *demand* the defendant, (or *cause him to be demanded*, *exigi faciat*), from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 1 *Tidd's Pr.* 132. 3 *Bl. Com.* 283, 284. *Archb. N. Prac.* 485. Now regulated by statute 2 Will. IV. c. 39.

EXIGENTER. [L. Lat. *exigendarius*.] An officer of the English Court of Common Pleas, whose duty it was to make out the *exigents* and proclamations, in the process of outlawry. *Cowell.* 1 *Archb. Pr.* 11. Abolished by statute 7 Will. IV. and 1 Vict. c. 80. *Holthouse*.

EXIGI FACIAS. L. Lat. (You cause to be demanded.) Another name of the

writ of *exigent*; being the two emphatic words of that writ. *Reg. Jud.* 2.

EXILE. [Lat. *exilium*.] Banishment; a driving out or sending away of persons; a species of waste committed by manumitting or ejecting tenants; or so excessive in itself as to have the effect of driving them away.* See *Exilium*.

EXILER. L. Fr. To drive off, as villeins from a manor. *Dyer*, 37, (Fr. ed.)

EXILIUM. L. Lat. [L. Fr. *exil*, *exyl*.] In old English law. Exile or banishment; a driving out, or sending away of persons. A species of waste, anciently classed with *vastum*, (waste proper,) *destructio*, (destruction,) and *venditio*, (sale,) but distinguished from these by having reference to persons (*homines*) only. It was a species of injury done to an estate, by setting free the bondmen (*servi*) or bond-tenants, or by wrongfully ejecting them. *Fleta*, lib. 1, c. 12, § 20. *Stat. Marlbridge*, c. 24. Bracton describes it as an aggravated kind of waste done to the injury and disfigurement of the chief messuage and the court or grounds about it, (*ad magnam deformitatem curie et capitalis messuagii*), as by pulling down and selling the buildings, so as to compel the occupants to leave, (*ut si inhabitatores mansionem habuerint derelictum*), or by cutting down and rooting up trees and orchards. *Bract.* fol. 316 b. 1 *Reeves' Hist. Eng. Law*, 386.

EXIRE. Lat. [from *ex*, from, and *ire*, to go.] In old English law. To go out. To issue, as a writ. *Fleta*, lib. 2, c. 50, § 8.

EXISTENS. L. Lat. Being. 2 *Str.* 747, 748.

EXISTIMATIO. Lat. In the civil law. The civil reputation which belonged to the Roman citizen, as such. 1 *Mackeld. Civ. Law*, 138, § 123. Called a state or condition of unimpeached dignity or character, (*dignitatis intactæ status*); the highest standing of a Roman citizen. *Dig.* 50. 13. 5. 1. See *Status*.

EXIT WOUND. In medical jurisprudence. A wound made by a weapon in coming out of the body, after having passed through it, or any part of it. 2 *Beck's Med. Jurispr.* 119.

EXITUS. Lat. [from *exire*, to go out, or proceed from.] In old English law and practice. Issue or offspring; a child or children. *Habuit exitum Thomam*, &c.; had issue Thomas. 2 *Mon. Angl.* 607.

Issues, (in the plural); the rents or profits

of land. *Cowell*. Defined by the statute of Westminster, 2, (c. 39,) to include rents, grain in barns, and all moveable things except horse furniture, clothing, and household utensils. See *Fleta*, lib. 2, c. 68, § 1. See *Issues*.

An issue, in pleading. So called, according to Lord Coke, because "issuing out of the allegations and pleas of the plaintiff and defendant." *Co. Litt.* 126 a. But properly, because it is the end of the pleading. *Exitus idem est quod finis, sive determinatio placiti*; issue is the same as the end, or determination of the plea. *Year Book*, 21 *Edw.* IV. 35. *Steph. Plead.* Appendix, Note (10). *De materia in exitu*; of the matter in issue. 12 *Mod.* 372.

A duty outwards; a custom on goods exported. *Exitus de cocketto*; *exitus sigilli quod vocatur cockett*; issues of the cocket. *Hale de Jur. Mar.* pars 2, (de port. mar.) c. 11. See *Cocket*.

The issue or result of an act. *In maloficiis spectatur voluntas et non exitus*; in injuries, the will or motive is regarded, and not the result. *Britt.* fol. 136 b.

An end. *Exitus termini*; the end of a term. *Bract.* fol. 20. An issue, as the end of pleading. See *supra*. See *Issue*.

EXLEGALITAS. L. Lat. [from *exlex*, q. v.] In old English law. Outlawry. *LL. Edw. Conf.* c. 38. *Spelman*.

EXLEGARE. L. Lat. In old English law. To outlaw; to deprive one of the benefit and protection of the law; (*exuere aliquem beneficio legis*). *Spelman*.

EXLEX. L. Lat. In old English law. An outlaw; *qui est extra legem*; one who is out of the law's protection. *Bract.* fol. 125. *Qui beneficio legis privatur*. *Spelman*, voc. *Exlegare*.

EXONERARE. Lat. [from *ex*, from, and *onus*, a burden.] In old English law. To discharge; to relieve or release from a burden or liability.

EXONERATIO. Lat. [from *exonerare*, q. v.] Discharge; the discharge or unloading of a cargo. *Loccen. de Jur. Mar.* lib. 2, c. 5, num. 9.

EXONERATION. In Scotch law. A discharge, or a deed by which a person is disburdened. *Bell's Dict.*

EXONERETUR. L. Lat. [from *exonerare*, to discharge.] (Let him be discharged.) In practice. An entry made upon a bail-piece, where the bail are discharged, either by the surrender of their

principal, or otherwise; signifying that the bail are exonerated. 1 *Tidd's Pr.* 280, 288. See an entry in Latin. 1 *Leon.* 58.

EXONIER. L. Fr. To excuse. See *Esconier*.

EXPATRIATION. [from Lat. *ex*, from, and *patria*, country.] The removing from, or forsaking one's native country; the renunciation or abjuration of one's native allegiance.* 2 *Kent's Com.* 43, 49.

Nemo patriam in qua natus est exuere, nec ligantie debitum ejurare possit. No man can shake off the country in which he was born, nor abjure the obligation of his allegiance. *Co. Litt.* 129. The principle of this maxim is not settled in American law. 2 *Kent's Com.* 49. 1 *Duer on Ins.* 545. *Cowen, J. 5 Hill's (N. Y.) R.* 16, 22.

EXPECT. [from Lat. *expectare*, from *ex*, from, and *spectare*, to look.] To look for; to wait for; to look forward to, as to something probable, intended, or contemplated. The words "expects to prove," in an affidavit, have been held insufficient. The party ought to say, "he firmly believes he can." 2 *Littell's R.* 230.

To be in readiness to operate. The word has sometimes been applied, in this sense, to instruments. To make a clause "wait and expect." *Bacon's Arg.* Case of Revocation of Uses; *Works*, iv. 248, 253.

EXPECTANCY, *Estate in*. An estate the possession of which a person is entitled to have in futuro.* 1 *Steph. Com.* 289. See *Estate in expectancy*.

EXPECTANT ESTATE. An estate in expectancy. See *Expectancy*.

EXPEDIT. Lat. It is expedient or profitable; it is for the good, benefit or advantage.

Expediit reipublice ut sit finis litium. It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. *Co. Litt.* 303 b. It is for the general good that some period be put to litigation. 6 *Co.* 7. 9 *Id.* 79.

Expediit reipublice ne sua re quis male utatur. It is for the interest of the state that a man should not enjoy his own property improperly, [to the injury of others]. *Inst.* 1. 8. 2.

EXPEDITARE, *Espealtare*. L. Lat. [from *ex*, out, and *pes*, foot.] In old forest law. To cut out the ball, or cut off the claws of a dog's foot; to expeditate, (q. v.) *Spelman. Cowell*.

To cut the foot or root of a tree, so as to occasion it to fall. *Fleta*, lib. 2, c. 41, sec. 32. *De quercubus expeditatis*. *Id. ibid.*

EXPEDITATE. [from *expeditare*, q. v.] In the forest law. To cut out the ball of dogs' forefeet, to prevent them from running after deer or game. *Cart. de Forest.* c. 6. *Crompt. Jur.* 152 *Manwood*, c. 16. 3 *Bl. Com.* 72. *Spelman*, voc. *Expeditare*.

EXPEDITATION. In forest law. The act or mode of expediting dogs; otherwise called *lawing*, (q. v.) 3 *Bl. Com.* 72. It was done in two ways; by cutting off three claws of the right fore-foot, (*ortelli*;) and by cutting out the ball (*pelota*) of the same foot. *Spelman*, voc. *Expeditare*. See *Cart. de For.* 9 Hen. III. c. 6. *Spelman*, voc. *Expeditare*.

EXPEDITIO. Lat. An expedition; an irregular kind of army. *Spelman*.

EXPEDITIO BREVIS. L. Lat. In old practice. The service of a writ. *Towns. Pl.* 43.

EXPENDITORS. In old English law. Persons who disbursed or expended moneys collected by tax, particularly for the repairs of sewers.* *Cowell*.

EXPENSÆ. Lat. [from *expendere*, to expend.] In the civil law. Expenses or charges. *Cod.* 7. 51. 5. *Expensæ litis*; costs of suit. *Calv. Lex.* *Expensæ circa funus*; funeral expenses. *Fleta*, lib. 2, c. 57, § 10.

Victus victori in expensis condemnabitur. The vanquished party shall be condemned to the victor in the costs, [i. e. adjudged to pay the costs]. *Cod.* 3. 1. 13.

Experientia per varios actus legem facit. Experience, by various or repeated acts, makes law. *Branch's Princ. Co. Litt.* 60.

EXPERIRI. Lat. In the civil law. To sue; to try one's right by law. *Inst.* 2. 6. 9. *Id.* 4. 6. 40. *Id.* 4. 11, pr. Used in the same sense with the words *judicio*, *actione*, &c. *Calv. Lex.*

EXPERT. [L. Lat. *expertus*, *peritus*.] A skilful or experienced person; a person having skill, experience or peculiar knowledge on certain subjects, or in certain professions; a scientific witness. Persons of this character, when called as witnesses in a cause, are allowed to state their opinions in evidence, contrary to the general rule that the opinion of a witness is not evidence. *Broom's Max.* 422, [721.] See *Cullibet in arte sua perito est credendum*. It seems that the

rule sometimes allowed to prevail, admitting *experts* to give an opinion, whether a signature is genuine or imitated, is not well established upon authority, and that such testimony is incompetent. *Bronson*, C. J. 1 *Denio's R.* 343, 346. 1 *Penn. R.* 161. 5 *B. & A.* 330. *Best on Evid.* 268, § 220. But see 10 *Clarke & F.* 193. *Id.* 154. 9 *Connecticut R.* 55. 17 *Pick. R.* 497.

EXPILARE. Lat. In the civil law. To spoil; to rob or plunder. Applied to inheritances. *Dig.* 47. 19. *Cod.* 9. 32.

EXPILATOR. Lat. [from *expilare*, q. v.] In the civil law. A robber; a spoiler or plunderer. *Expilatores sunt atrociores fures*. *Dig.* 47. 18. 1. 1.

EXPIRE. To come to an end; to cease; to terminate; as a lease, a contract, &c.

EXPIRY OF THE LEGAL. In Scotch law and practice. Expiration of the period within which an adjudication may be redeemed, by paying the debt in the decree of adjudication. *Bell's Dict.*

EXPLACITARE. L. Lat. In old English law. To gain a suit, (*litem obtinere*;) to overcome in pleading, (*placitando evincere*). *Spelman. Will. Malmsh. de Reg. Gest.* lib. 2, c. 13.

EXPLECTAMENTA. L. Lat. A term used in old European law, corresponding, as *Spelman* conjectures, with the *esplees* (q. v.) of the English law.

EXPLEES. [L. Lat. *expletia*, q. v.] The profits of an estate. See *Esplees*.

EXPLETIA, Explecia, Explicia. L. Lat. [from *explere*, to fill or make up; to complete or make perfect.] In old English law. *Esplees*; the profits of land. *Bract.* fol. 40, 44 b. *Excoluit terram, et blada expendit, et redditus et expletia cepit*; he cultivated and sowed the land, and took the rents and *esplees*. *Id.* fol. 50 b, 206 b, 372 b, 373. See *Fleta*, lib. 2, c. 53, § 3. *Id.* lib. 6, c. 16, § 2. So called, because the estate is made complete and perfect by reaping the *explees*, that is, the fruit and commodity thereof. 6 *Co.* 58 b. See *Esplees*.

EXPLICATIO. Lat. In the civil law. A pleading corresponding with the surrejoinder of the common law; (*allegatio infirmans supplicationem*). *Calv. Lex. Spiegelius*, cited *ibid.* See *Supplicatio*.

EXPOLIARE, Exspoliare. Lat. In the civil law. To rob, plunder or spoil. *Expoliatores*; robbers. *Calv. Lex. Spelman*, voc. *Effractoires*.

To deprive or take away. *Calv. Lex.*

To EXPORT. [from Lat. *exportare*, from *ex*, from, and *portare*, to carry.] To carry out; to carry out of a country; to carry or send goods and merchandise from one country, to another, in the course of trade.

To carry out or convey goods by sea. *Vaugh.* 171, 172.

EXPORT. A thing or commodity exported. More commonly used in the plural.

EXPORTATION. The act of exporting goods or merchandise. The day of the sailing of a vessel from a foreign port to the United States, is the true period of exportation of goods. 20 *Howard's R.* 571.

EXPOSITIO. Lat. [from *exponere*, to explain or interpret.] Explanation; exposition; interpretation.

Expositio que ex visceribus causæ nascitur, est aptissima et fortissima in lege. That kind of interpretation which is born [or drawn] from the bowels of a cause, is the aptest and most forcible in the law. 10 *Co.* 24. See *Ex visceribus*.

EXPRESS, EXPRESSED. [Lat. *expressum*, *expressa*; from *exprimere*, to declare openly.] Openly declared or signified; distinctly mentioned in words or set down in writing, as distinguished from what is implied by law. See *infra*.

EXPRESS ABROGATION. Abrogation by express provision or enactment; the repeal of a law or provision, by a subsequent one, referring directly to it. See *Abrogation*.

EXPRESS ASSUMPSIT. An express undertaking to do some act, or to pay a sum of money to another. See *Assumpsit*.

EXPRESS CONSIDERATION. A consideration distinctly declared by the terms of the contract itself; as where a man contracts to sell his land for a named sum of money.

EXPRESS CONTRACT. A contract, the terms of which are openly uttered or declared at the time of making it. 2 *Bl. Com.* 443. 2 *Steph. Com.* 110. A contract made in express words, or by writing; as distinguished from an implied contract. 2 *Kent's Com.* 450.

EXPRESS TRUST. A trust created or declared in express terms, and usually in writing, as distinguished from a trust implied by law. Otherwise called an *active* trust. 4 *Kent's Com.* 305, 310. As to the proof of an express trust, see 5 *Ohio St. R.* 194.

EXPRESS WARRANTY. In convey-

ancing. A warranty in a deed expressed by particular words, (such as *warrantie*, I warrant); as distinguished from that which was implied by law from other words, (such as *dedi*, I have given). 2 *Bl. Com.* 300, 301. See *Dedi*.

In the law of insurance. An agreement expressed in a policy, whereby the assured stipulates that certain facts relating to the risk are or shall be true; or certain acts relating to the same subject have been or shall be done. 1 *Phillips on Ins.* 346.

EXPRESSA. Lat. [from *exprimere*, to express or declare.] Things or words expressed, or expressly mentioned.

Expressa nocent, non expressa non nocent. Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm. *Dig.* 35. 1. 52. *Id.* 50. 17. 195. See *Calv. Lex.* A party may sometimes prejudice himself by using words unnecessarily. Another form of this maxim is *Expressa non prestant que non expressa prederunt*. 4 *Co.* 73.

EXPRESSIO. Lat. [from *exprimere*, to express.] Expression; distinct mention in words or writing.

Expressio eorum que tacite insunt nihil operatur. The expression or express mention of those things which are tacitly implied, avails nothing. 2 *Inst.* 365. A man's own words are void, when the law speaketh as much. *Finch's Law*, b. 1, ch. 3, num. 26. Words used to express what the law will imply without them, are mere words of abundance. 5 *Co.* 11. Thus, if land be let to two persons for the term of their lives, this creates a joint tenancy; and if the words "and the survivor of them" are added, they will be mere surplusage, because, by law, the term would go to the survivor.* *Co. Litt.* 191 a. 4 *B. & Ald.* 306. *Broom's Max.* 286, [518].

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another. *Co. Litt.* 210 a. The express mention of one thing [person or place] implies the exclusion of another. See *Benignatio unius est exclusio alterius*. This is a leading maxim in the construction of deeds, and the foundation of the rule that an implied covenant is in all cases controlled within the limits of an express covenant. 4 *Co.* 80 b. *Broom's Max.* 278, 279, and note; [505—518]. It is a maxim also in the construction of statutes. *Story*, J. 3 *Story's R.* 87, 89. But it has been held

not to apply in construing the Constitution of the United States. *Federalist*, No. 83.

For other applications of this maxim, see 1 *Story's Eq. Jur.* § 102. *Story on Bailm.* § 550. *Story on Partn.* § 209. Shaw, C. J. 2 *Metcalf's R.* 234, 241.

EXPRESSUM, *Expressa*. Lat. [from *exprimere*, to express.] Express; expressed. A thing or word expressly or distinctly mentioned. *Bract.* fol. 18.

Expressum facit cessare tacitum. That which is expressed makes that which is implied to cease; [that is, supersedes it, or controls its effect]. Thus, an implied covenant in a deed is, in all cases, controlled by an express covenant. 4 *Co.* 80. *Broom's Max.* 278, [505—518]. So, in other cases than those of instruments under seal, it is a general rule that parol evidence is inadmissible to show terms upon which the instrument is silent; or, in other words, where there is an express contract between parties, none can be implied. *Id.* 281, and cases cited *ibid.* [517]. 2 *Steph. Com.* 112.

EXPROMISSOR. Lat. [from *expromittere*, q. v.] In the civil law. One who assumes the debt of another, discharging the first debtor, and making himself originally liable in his place; one who was substituted as a debtor by the process of *delegation*, (q. v.) *Inst.* 2. 1. 41. *Dig.* 12. 4. 4. *Heinecc. El. Jur. Civ. lib.* 3, tit. 30, § 1015. *Calv. Lex.* A person whom a creditor takes as a substitute for his debtor, whom he thereby discharges. *Poth. Obl.* part 3, ch. 2, art. 1.

EXPROMITTERE. Lat. In the civil law. To undertake for another, with the view of becoming liable in his place. *Calv. Lex.*

EXQUÆSTOR. Lat. In the Roman law. One who had filled the office of *quæstor*. A title given to Tribonian. *Inst. præm.* § 3. Used only in the ablative case, (*exquæstore*).

EXROGARE. Lat. [from *ex*, from, and *rogare*, to pass a law.] In the Roman law. To take something from an old law, by a new law. *Tayl. Civ. Law*, 155. The same with *derogare*, (q. v.)

EXTEND. [L. Lat. *extendere*; L. Fr. *estendre*.] In English practice. To value the lands or tenements of a person bound by a statute or recognizance which has become forfeited, to their full *extended* value. 3 *Bl. Com.* 420. *F. N. B.* 131. To execute the writ of *extent* or *extendi facias*, (q. v.) 2 *Tidd's Pr.* 1043, 1044.

This term seems to be considered synonymous with *value*, although the latter word is always used in connection with it. So, in the oldest forms, both words occur;—*extendere et appreciare*,—*extendi et appreciari*,—*extensio* (or *extensia*) et *appreciatio*. *Bract.* fol. 72. *Id.* fol. 75 b. *Reg. Jud.* 2, 32 b. It would appear that its proper original meaning was to *lay out* land, or to make an inventory of it under certain heads, as preparatory to appraisement. 'This may be gathered from the use of the term in Bracton, as applied to the partition of estates. See *Extendere*, *Extensores*, *Extensia*.

EXTENDERE. L. Lat. In old English practice. To appraise or value. See *Extend*.

To lay out, survey, or make an inventory of. *Extendere et appreciare*; to lay out and appraise. *Bract.* fol. 72. See *Britt.* c. 71. To set off, or assign. *Extenderunt tali xx. libratas terras pro decem*; they set off to such a one twenty pound-lands instead of ten. *Bract.* fol. 75.

Extendere se; to amount to. *Ad quam summam damna se extendunt occasione, &c.*; to what sum the damages amount, on occasion, &c. *Reg. Jud.* 58 b. See *Attingere*.

EXTENDI FACIAS. L. Lat. (You cause to be extended.) In English practice. The name of a writ of execution, (derived from its two emphatic words); more commonly called an *extent*. 2 *Tidd's Pr.* 1043. 4 *Steph. Com.* 43. See *Extent*.

EXTENSIO. L. Lat. [from *extendere*, q. v.] In old English law. An extent. *Fleta*, lib. 5, c. 9, § 4.

EXTENSION. In mercantile law. Enlargement of time for the payment of debts. An agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities.

EXTENSORES. L. Lat. [L. Fr. *estendours*.] In old English law. Extenders or appraisers. The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule or inventory of the lands, to lay them out under certain heads, and then to ascertain the value of each, as preparatory to the division or partition. *Bract.* fol. 72 b, 75. *Britt.* c. 71. *Fleta*, lib. 5, c. 9, § 5. *Barringt. Obs. Stat.* 103, note [w].

EXTENT, (or **EXTENDI FACIAS**). In English practice. A species of execution upon debts of record due to the crown,

differing in this respect from an ordinary writ of execution at suit of the subject, that under it the body, lands and goods may be all taken at once in order to compel the payment of the debt. 4 *Steph. Com.* 42. Its name is derived from the words of the old writ, commanding the sheriff to *cause* the lands, goods and chattels to be extended (*extendi facias*;) and appraised, &c.* *Id.* 43. 3 *Bl. Com.* 420. See *Extendi facias*, *Extend*. There are two kinds of this writ; an extent in chief, and an extent in aid. 2 *Tidd's Pr.* 1045.

The act of extending lands, (L. Lat. *extenta*, *extensio*;) the act of the sheriff in executing the writ of extent. *Bro. Abr. Extent*. *Stat.* 16 & 17 *Car.* II. c. 5. See *Extenta*, *Extensio*.

EXTENT IN CHIEF. In English practice. The principal kind of extent, issuing at the suit of the crown, for the recovery of the crown's debt. 4 *Steph. Com.* 47. 2 *Tidd's Pr.* 1045. See *Extent*.

EXTENT IN AID. In English practice. That kind of extent which issues at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself. 2 *Tidd's Pr.* 1045. 4 *Steph. Com.* 47.

EXTENT. In Scotch practice. The value or valuation of lands. *Bell's Dict.* The rents, profits and issues of lands. *Skene de Verb. Signif.*

EXTENTA. L. Lat. In old records. An extent; an estimate or valuation; or, more properly, a survey or register of lands. 1 *Mon. Angl.* 548. *Cowell.* See *Extenta manerii*.

EXTENTA MANERII. L. Lat. (The extent or survey of a manor.) The title of a statute passed 4 *Edw. I.* st. 1; being a sort of direction for making a survey or terrier of a manor, and all its appendages. 2 *Reeves' Hist. Eng. Law*, 140. Mr. Barington observes that it is most certainly no act of parliament, in any sense of the word, but is merely a set of instructions to the king's extender, with regard to what he shall inquire into, and upon what heads and particulars he is to make his report. *Obs. Stat.* 103.

EXTENTIO, Extensio. L. Lat. [from *extendere*, q. v.] In old English law. An extending, surveying or laying out of lands. *Bract.* fol. 72, 75 b. *Fleta*, lib. 6, c. 25, § 8.

EXTENUATE. [from Lat. *extenuare*, from, *ex*, and *tenuis*, slender or small.] To lessen; to palliate; to mitigate.

EXTERUS. Lat. A foreigner or alien; one born abroad. The opposite of *civis*. *Bacon's Works*, iv. 345.

EXTINCT. [from Lat. *extinguere*, to destroy or put out.] Extinguished. A rent is said to be extinguished when it is destroyed and put out. *Co. Litt.* 147 b. See *Extinguishment*.

EXTINCTION. See *Extinguishment*.

Extincto subjecto, tollitur adjunctum. When the subject is extinguished, the incident ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases. *Inst.* 3. 26. 6. 3 *Kent's Com.* 52, note.

EXTINGUISHMENT. A putting an end to a thing, as an estate or right, usually by consolidating or uniting it with another.*—The annihilation of a collateral thing or subject, in the subject itself out of which it is derived. *Preston on Merger*, 9. Extinguishment is sometimes confounded with *merger*, though there is a clear distinction between them. *Merger* is only a mode of extinguishment, and applies to estates only under particular circumstances; but *extinguishment* is a term of general application to rights as well as estates. 2 *Crabb's Real Prop.* 367, § 1487. Called *extinction*. 2 *Steph. Com.* 41. See *United States Digest*, *Extinguishment*.

EXTINGUISHMENT OF COMMON is effected in various ways. By unity of seisin or possession; as where the person entitled to common becomes seised in fee by purchase, or otherwise, of the land which is subject to the right. 2 *Steph. Com.* 41. 1 *Crabb's Real Prop.* 303, § 336. By severance from the land to which it belongs. *Id.* 305, § 340. By release; as when a person entitled to common, releases it to the owner of the soil over which it is claimed. *Co. Litt.* 280 a, 270 a. *Litt. sect.* 479, 480. 2 *Steph. Com.* 41. 1 *Crabb's Real Prop.* 306, § 341. By improvement or enclosure; and by dissolution of the estate. *Id.* 306, 307, §§ 342, 343. See 2 *Hilliard's Real Prop.* 75.

EXTINGUISHMENT OF COPYHOLD. In English law. A copyhold is said to be *extinguished*, when the freehold and copyhold interest unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold, or by the freehold interest coming to the copyhold. 1 *Crabb's Real Prop.* 670, § 864.

EXTINGUISHMENT OF DEBT.

Where a judgment is given for a debt, the original debt is *extinguished*. So, if a feme sole who is a creditor marry her debtor, or if a man make his debtor his executor, the debt is *extinguished*. 8 Co. 136. *Plowd.* 184. 1 *Salk.* 304. *Whishaw.* *Wharton's Lex.*

EXTINGUISHMENT OF RENT. If a person have a yearly rent of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is *extinguished*. *Termes de la Ley.* *Cowell.* *Co. Litt.* 147. Rent may also be extinguished by conjunction of estates, by confirmation, by grant, by release and by surrender. 1 *Crabb's Real Prop.* 210—213, § 209.

EXTINGUISHMENT OF WAYS is usually effected by unity of possession. As if a man have a way over the close of another, and he purchase that close, the way is *extinguished*. 1 *Crabb's Real Prop.* 341, § 384.

EXTIRPARE. Lat. In old English law. To extirpate or root out; to destroy utterly, or from the foundation. Applied in old writs to the destruction or demolition of houses. *Unam aulam—quatuor cameras—unam coquinam—extirpaverunt*, &c.; they extirpated or entirely destroyed one hall, four chambers, one kitchen, &c. *Reg. Jud.* 13. *Id.* 58 b.

EXTIRPATION. In English law. A species of destruction or waste, analogous to estrepement. See *Estrepement*, *Extirpare*.

EXTOCARE. L. Lat. In old records. To grub wood-land and reduce it to arable or meadow; "to stock up," as it is rendered in *Cowell.* 2 *Mon. Angl.* 71.

EXTORTION. [from Lat. *extortio*, from *extorquere*, to wring or wrest from.] In criminal law. An unlawful or violent wringing of money or money-worth from any man. *Cowell.* A taking of more than is due, by color or pretence of right. *Id.*

The offence of an officer's taking, by color of his office, any money, or thing of value that is not due to him, or more than is due, or before it is due. *Co. Litt.* 368 b. 10 Co. 102. 4 *Bl. Com.* 141. 4 *Steph. Com.* 272. 2 *N. Y. Rev. Stat.* [650.] 542, § 5. *Lewis' U. S. Crim. Law*, 267.

EXTPO'IT. A contraction of *Extra positus*. 1 *Inst. Cler.* 10.

EXTRA. Lat. [L. Fr. *hors*, *dehors*.] Without; out of; beyond. Applied to

things and places; its opposite being *in* or *intra*. *Calv. Lex.*

Except; (as applied to persons.) *Id.*

A term by which the Decretals of Gregory, in the canon law, are usually cited. *Hallifax, Anal.* b. 1, ch. 1, note.

EXTRA FEODUM. L. Lat. [L. Fr. *hors de son fee*.] Out of his fee; out of the seignior, or not holden of him that claims it. *Co. Litt.* 1 b. *Reg. Orig.* 97 b.

EXTRA JUDICIUM. Lat. Out of court. *Sive in judicio, sive extra judicium*; whether in court, or out of court. *Inst.* 4. 11. 4.

Not by a judicial proceeding; not by due course of law. *Quæ non in judicio, sed extra prosequimur*; which we prosecute not by course of law, but without it. *Bract.* fol. 98 b.

Out of judgment; beyond the line of judicial duty; extra-judicial, (q. v.)

EXTRA JUS. Lat. Beyond the law; more than the law requires. *In jure, vel extra jus.* *Bract.* fol. 169 b.

EXTRA LEGEM. L. Lat. Out of the law; out of the protection of the law. *Extra legem positus est civiliter mortuus*; one who is put out of the law [outlawed] is civilly dead. *Co. Litt.* 130. Outlaws (*utlagati*) said to be *extra legem positi*; put out of the law. *Fleta*, lib. 1, c. 28, § 14.

EXTRA QUATUOR MARIA. L. Lat. Beyond the four seas; out of the kingdom of England. 1 *Bl. Com.* 457. See *Beyond sea*, *Four seas*.

EXTRA REGNUM. Lat. Out of the realm. 7 Co. 16 a. 2 *Kent's Com.* 42, note.

EXTRA TERRITORIUM. Lat. Beyond or without the territory. 6 *Binney's R.* 353. 2 *Kent's Com.* 407.

Extra territorium jus dicenti impune non paretur. One who exercises jurisdiction out of his territory is not obeyed with impunity. *Dig.* 2. 1. 20. *Branch's Princ.* 10 Co. 77. He who exercises judicial authority beyond his proper limits, cannot be obeyed with safety.

The peculiar meaning of the words *jus dicenti*, (which themselves present an analysis of the word *jurisdiction*), is lost sight of in the ordinary translations of this maxim. See *Branch's Princ.* *Wharton's Lex.*

EXTRA VIAM. Lat. Out of the way. *Bayley, J.* 16 *East*, 351.

EXTRACT. In Scotch law. The certified copy, by a clerk of a court, of the proceedings in an action carried on before

the court, and of the judgment pronounced; containing also an order for execution or proceedings thereupon. *Jacob. Whishaw.*

EXTRACTA. L. Lat. In old English law. Extracts; estreats. *Stat. Westm. 2, c. 8. See Estreat. Extracta scaccarii, or de scaccario; estreats of the exchequer. Fleta, lib. 1, c. 20, § 101. Id. lib. 2, c. 13, § 13.*

Profits arising from amercements. *Extracta curiæ; the issues or profits of holding a court, arising from the customary dues, fees and amercements. Cowell.*

EXTRADITION. [from Lat. *ex*, from or out of, and *traditio*, a delivery.] Delivery from one nation or state to another. Delivery, by one nation or state to another, of fugitives from justice, in pursuance of a law or treaty.* *Webster. Lewis' U. S. Crim. Law, 241, et seq. Wheaton's Intern. Law, 176—180; part 2, chap. 2, § 13.*

EXTRADOTAL. Not forming a part of a woman's dowry. A term applied to a species of a wife's separate property. *Code of Louis. art. 2315.*

EXTRAFAMILIATUS. Lat. The same with *forisfamiliatus*, (q. v.) *Spelman.*

EXTRAHERE. L. Lat. In old practice. To estreat. *Extraxit; estreated. 3 Leon. 8.*

EXTRAHURA. L. Lat. In old English law. An estray; a beast which having escaped from its keeper, strays over the country, its owner being unknown, (*pecus quod, elapsum à custode, campos pererrat, ignoto domino;*) a wandering animal, (*animal palans.*) *Spelman.* Called by *Spelman*, a law term, (*vox fori*), and derived from the Fr. *extrayeur*, as though withdrawing (*extrahens*) itself from the flock, or from its companions, and wandering alone (*solivagum;*) or from *extra*, quasi *extrarius*, out of its place. See *Estray*.

EXTRA-JUDICIAL. [from Lat. *extra*, beyond, and *judicium*, judgment or due course of law. See *Extra judicium*.] Out of the ordinary course of law; out of the regular order of judicial procedure; beyond the limits of judicial authority or duty; out of, or beside the matter to be adjudged. Applied most commonly to the acts of a judge where he exceeds his authority, or goes beyond what is required of him; as where he expresses an opinion on a point not regularly submitted to him. See *Dictum*. An extra-judicial opinion, whether given in or out of court, is no more than the *prolatum* of him who gives

it; it has no legal efficacy. So, an opinion given in court, if not necessary to the judgment, is extra-judicial. *Vaugh. 332. Hale's Hist. Com. Law, 90, note.*

EXTRANEUS. Lat. [from *extra*, without.] In old English law. A stranger or foreigner; one who is born out of the king's dominions, (*qui extra terram, i. e. potestatem regis, natus est.*) *7 Co. 16.*

A stranger; a person not known. *Fleta, lib. 1, c. 24, §§ 4, 5.*

In the Roman law. A term applied to an heir who was not subject to the power of the testator; (*testatoris juri non subjectus.*) *Inst. 2. 19. 3.* The *hæres extraneus* was thus distinguished from the *suus*, or *domesticus hæres*. *Id. 2. 19. 2. Heinecc. Bl. Jur. Civ. lib. 2, tit. 19, § 586.*

EXTRAPAROCHIAL. [from *extra*, without, and *parochia*, a parish.] Out of a parish; not within the bounds or limits of any parish. *1 Bl. Com. 113, 284.*

EXTRA TERRITORIALITY. In international law. A fiction by which a public minister, though actually in a foreign country, is supposed still to remain within the territory of his own sovereign. *Wheaton's Intern. Law, 283, 284; part 3, ch. 1, § 14.*

EXTRAVAGANTES. L. Lat. In the canon law. The title of the papal constitutions and decretal epistles of Pope John XXII. and his successors; being one of the divisions of the *Decretales*, or second part of the *Corpus Juris Canonici*. See *Decretales*. So called, because at first they were not digested or embodied with the other papal constitutions, but remained out of (*extra*) the body of the canon law, as though wandering or straying (*vagantes*) by themselves.* *Ducange. 1 Bl. Com. 82.* They are generally called, in English, *Extravagants*, and are of two kinds; the *Extravagantes Joannis XXII.* or those published by John himself, consisting of twenty decretals, and the *Extravagantes Communes*, or those published by his successors, being divided into five books. *Id. ibid. 1 Mackeld. Civ. Law, 82, 83, note. Hallifax, Anal. b, 1, ch. 1, note. See Butler's Hor. Jur. 116.*

EXTREMIS. See *In extremis*.

EXTUMÆ. L. Lat. In old records. Reliques. *Cowell.*

EXTUNC. Lat. From then; from that time; from thence; thereafter. *Calv. Lex. Fleta, lib. 2, c. 47, § 2. 2 Mod. 24. Extunc imperpetuum; from thenceforth for-*

ever. *Reg. Orig.* 289 b. *Extunc deinceps* (or *de cætero*) *imperpetuum*. *Towns. Pl.* 22.

EXUERE PATRIAM. Lat. To throw off or renounce one's country or native allegiance; to *expatriate* one's self. *Phillimore on Domicil*, 18. See *Expatriation*.

EXULARE. Lat. In old English law. To exile or banish. *Nullus liber homo—exuletur, nisi, &c.*; no freeman shall be exiled, unless, &c. *Magna Charta*, c. 29. 2 *Inst.* 47.

EY. [L. Lat. *eia*; L. Fr. *ewe*, water; Sax. *eage*.] In old English law. A watery place or water. *Co. Litt.* 5 b. Kelham puts this down as a French word.

A place surrounded by water; an island. *Spelman*, voc. *Eia*. A frequent termination of the names of places in England, (as *Ramsey*, *Sheppey*, &c.) denoting, according to *Spelman*, either an island or peninsula, or a situation near a river or other water. See *Eia*.

EYDE, Eide, Aide. L. Fr. Aid; help; relief; assistance. *Par eyde de nostre court.* *Britt.* c. 15.

Aid, in the feudal law. *Id.* c. 27.

A subsidy. *Stat. Confirm. Chart.* c. 5. 2 *Inst.* 528.

Help. See *Eyder*.

EYDER. L. Fr. To aid or help. *Se purra il eyder par excepcions*; he may help himself by exceptions. *Britt.* c. 104.

Si moy eyde Dieu et ses (les) seyntz; so help me God, and his (the) saints. *Id.* c. 68.

EYENS. L. Fr. But. *Kelham*.

EYES EID'. L. Fr. Have aid; have relief. A common form of giving judgment in the Year Books. T. 2 Hen. VI. 3.

EYE-WITNESS. [Lat. *oculatus testis*.] One who saw the act, fact or transaction, to which he testifies. Distinguished from an ear-witness, (*auritus*.) See *Plus valet, &c.*

EYGNE, Eyne. L. Fr. Eldest. *Fitz eygne.* *Britt.* c. 27. See *Aisme*.

EYNESSE, Eynesce. L. Fr. Eldest. *Fille eynesse.* *Britt.* c. 27.

EYNTZ. L. Fr. Therein. *Kelham*.

EYOTT, Eyot, Eyet. [dimin. of *ey*, an island; L. Lat. *insuletta*.] A small island; an islet. 2 *Bl. Com.* 261. 1 *Crabb's Real Prop.* 113. *Schultes' Aquat. Rights*, 94.

EYR. L. Fr. Air. *Britt.* c. 33.

EYRE, Eire, Eier, Eyer. L. Fr. and Eng. [Scotch *ayre*, *ayr*, *aire*; from Lat. *iter*, a journey.] In old English law. A

journey; the journey or circuit of the king's justices. *Britt.* c. 2. See *Eire*.

The court of the justices itinerant, or justices in eyre. *Britt.* c. 2. *Co. Litt.* 293. *Gillb. C. Pleas*, Introd. 23. 1 *Reeves' Hist. Eng. Law*, 52. *Spelman*, voc. *Iter*.

EYRER. L. Fr. [Lat. *itinerare*.] To travel, or journey; to go about or itinerate. *Britt.* c. 2.

EYSEMENT. L. Fr. Easement. *Kelham*.

EYSNE. L. Fr. Elder; eldest. *Yearb.* T. 1 Edw. II. 14.

EYT. L. Fr. Have; hath. *Britt.* c. 55. Shall be; will be. *Kelham.* *Eyent*; have. *Britt.* c. 21.

EZ. L. Fr. In; within. *Kelham*.

EZL. L. Fr. His. *Kelham*.

F.

F. The letter anciently used in England, for branding persons who had been guilty of *falsity*, in breaking their oaths under the statute of laborers; *fighters* and makers of *frays* in churches and churchyards; and *felons*, on their being admitted to the benefit of clergy. *Stat.* 34. *Edw.* III. c. 10. 2 *Reeves' Hist. Eng. Law*, 392. 4 *Id.* 485. *Stat.* 5 & 6 *Edw.* VI. c. 4. *Cowell.* *Stat.* 4 Hen. VII. c. 13. *Tomlins*.

F. A letter used in the civil law, in various abbreviations. **F. c.** for *fidei commissum*, or *fiducie causa*, or *fraude creditoris*. **F. d.** for *fides data*, or *fide data*. **F. f.** for *filius familias*, or *fidem fecit*. **F. j.** for *feri jussit*. **F. n. c.** for *fidei nostre commisit*. *Calv. Lex. Prateius*.

FAB. *far, porta, domus, vir, gur, mo, murus, ovile*,
Et pons, tradantur hæc vice-comitibus.

A Latin couplet artificially composed of words and parts of words, anciently used as an aid to the memory, to show what descriptions of nuisances or disseisins by nuisance were cognizable before the sheriffs in the county court. *Reg. Orig.* 199, *regula*. By writing the abbreviated words at length, the following sentence is produced: *Fabrica, furca, porta, domus, virgultum, gurges, molendinum, murus, ovile, et pons, tradantur hæc vice-comitibus*; or in English, Building, gallows, gate, house, wood, gulf, mill, wall, sheepfold and bridge, these should be delivered to the sheriff; i. e. writs for nuisances to the several objects enumerated, must be tried before the sheriff in the county where the nuisance was committed. *Reg. Orig. ub. sup.*

FABRIC LANDS. In English law. Lands given towards the maintenance, rebuilding or repairing of cathedral and other churches. *Cowell. Blount.* So called because given *ad fabricam ecclesiæ reparandum*; (to repair the fabric of the church.) *Id.*

FABRICA. L. Lat. In old English law. The making or coining of money. *Mem. in Scacc. H. 12 Edw. I.*

FABRICARE. L. Lat. In old pleadings and records. To forge. *Fabricavit et contrafecit*; (he) forged and counterfeited. 2 *Ld. Raym.* 1462. 1 *Salk.* 342. *Falsum factum fabricavit*; (he) forged a false deed. 5 *Co.* 62. See *Forge.*

In old English law. To make lawfully; to coin. *Mem. in Scacc. H. 12 Edw. I.*

FABRICATE. [from Lat. *fabricare*, q. v.] In the law of evidence. To forge; to devise falsely; to create by artifice, with a view to deceive; as to fabricate evidence, or facts, the materials of evidence. To produce or exhibit false and deceptive appearances, in order to their being observed and testified to, as genuine facts. To present false statements of transactions or occurrences, through the medium of evidence. See *infra.*

FABRICATED FACT. In the law of evidence. A fact existing only in statement, without any foundation in truth. The semblance or appearance of a fact, created by design and presented as a reality. *Burr. Circ. Evid.* 131, 219, 420.

An actual or genuine fact to which a false appearance has been designedly given. A physical object employed to give a false appearance to a transaction; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion; such as a bloody knife conveyed into his possession, or foot-prints made with his shoes near a scene of crime. See *Burr. Circ. Evid.* 131, 132, 142, 219—221, 421.

An act on the part of a criminal, simulating innocence, or conveying an impression of innocence. *Id.* 428—433.

FABRICATION. In the law of evidence. False making; production of false and deceptive appearances; creation by artifice, with a view to deceive; the employment of physical objects for the purpose of making false impressions upon observers, and with a view to such impressions being reported in evidence; the

arrangement of physical objects or appearances in such a manner as to convey false impressions of the nature of a transaction, and lead to false inferences as to the persons concerned in it. See *Burr. Circ. Ev.* 131, 420, et seq. Sometimes called *forgery of real evidence.* 3 *Benth. Jud. Ev.* 49. *Best on Pres.* § 220, et seq.

Production of false impressions, by language and conduct. *Burr. Circ. Ev.* 428.

Presentation, through witnesses, of false impressions as facts, or of fabricated facts, as genuine ones. *Id.* 434.

FABULA. L. Lat. In old European law. A contract or covenant. Used in the laws of the Lombards and Visigoths, to denote a nuptial contract, and a will; (*tabulæ nuptiales seu testamentales.*) *Spelman. LL. Longob. lib.* 1, tit. 30, c. 3. *Id.* tit. 19, c. 9. *LL. Wisegoth. lib.* 3, tit. 1, l. 6. *Id.* lib. 5, tit. 2, l. 4., cited *ibid.*

FACERE. Lat. In the civil law. To do; to make. A word of very comprehensive signification. *Dig.* 50. 16. 218. See *Calv. Lex. Brissonius.*

FACERE. Lat. [Fr. *faire.*] To do, to make, to act; to cause (a thing to be done.) An important word formerly in the language of writs and contracts, and the general language of the law. See *Facio.*

Facere defaultam; to make default. *Bract.* fol. 238, 334 b, 360 b, 363.

Facere duellum; to make the duel; to engage in the combat, or make or do battle, as the phrase still is. *Bract.* fol. 141 b.

Facere finem; to make or pay a fine. *Id.* fol. 154.

Facere legem; to make one's law. *Id.* fol. 156 b, 334 b, 335 b, 410. See *To make law.*

Facere sacramentum; to make oath. *Id.* fol. 50 b, 185 b. See *Make.*

FACIAS. L. Lat. [from *facere*, q. v.] You cause, (*quod facias*, that you cause.) An emphatic word in various writs, as of *venire facias*, *feri facias*, *scire facias*, (qq. v.) Hence selected to express their names.

FACIENDO. L. Lat. [from *facere*, (q. v.); L. Fr. *fesaunt.*] Doing, making or paying. One of the apt words of reserving a rent, used in ancient deeds. *Co. Litt.* 47 a. Applied usually to those services which consisted of acts done, (*factiones.*) *Faciendo inde talia servitia*; doing therefor such services. *Bract.* fol. 35 b. *Fleta*, lib. 3, c. 14, § 17. See *Doing.*

FACIES. Lat. The face, outward appearance or color of a thing; the inspection or view of a thing. *Prima facies*; the first face or appearance. *Prima facie*; on the first view or color, (at first blush, as the modern phrase is.) *Bract.* fol. 29, 280. See *Color*, *Ex facie*, *In facie ecclesie*.

FACIES? FACIAM. Lat. (Will you do? I will do.) In the civil law. One of the forms in which verbal obligations or stipulations were made. *Inst.* 3. 16. 1.

FACILE. [from Lat. *facilis*, easy.] In Scotch law. Easily persuaded; easily imposed upon. *Bell's Dict.*

FACILITY. In Scotch law. Pliancy of disposition. *Bell's Dict.* See *Facile*.

FACIO UT DES. Lat. (I do that you may give.) In the civil law. A form of words used to express that kind of contract where a man agrees to do a thing for a price or thing to be given him by another. 2 *Bl. Com.* 445. *Dig.* 2. 14. 7. *Id.* 19. 5. 5. *Bract.* fol. 18, 19, 19 b. *Fleta*, lib. 2, c. 60, § 23.

FACIO UT FACIAS. Lat. (I do that you may do.) In the civil law. Words used to express that kind of contract where a person agrees to do some act for another, if the other will do some other act for him. 2 *Bl. Com.* 444. *Dig.* 19. 5. 5. *Bract.* fol. 19 b. *Fleta*, lib. 2, c. 60, § 23. See *Facio ut des*.

FACION. L. Fr. Making; fashion. *Kelham.*

FACIT. Lat. [from *facere*, q. v.] In old English law. He does or acts; it makes, or contributes to establish. *Ad idem facit*; it makes to the same thing; it goes to establish the same point. A common expression in Bracton. *Bract.* fol. 27 b, 29. *Ad hoc facit.* *Fleta*, lib. 1, c. 38, § 15. *Id.* lib. 3, c. 10, § 3.

Qui facit per alium, facit per se, (q. v.) He who acts through another, acts through himself. 1 *Bl. Com.* 429, 474.

Qui facit id quod plus est, facit id quod minus est, sed non convertitur. He who does the greater does the less; but this is not true *è converso*. *Bract.* fol. 207 b.

FACT. [L. Lat. *factum*, q. v.] A thing done; a circumstance, event or occurrence. This word was anciently used almost exclusively as the synonyme of *act* or *deed*; e. g. "accessary before and after the *fact*;" but in modern law it has the broader sense of circumstance.

Fact is contrasted with *law* in the common phrases, "attorney at *law* and attorney

in *fact*;" "issue in *law*, and issue in *fact*;" "fraud in *law*, and fraud in *fact*." The Lat. *factum* had sometimes the more intense sense of a thing done in violation of law. See *Factum*.

FACT. [from Lat. *factum*, q. v.] In the law of evidence. A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error. *Burr. Circ. Evid.* 218.

A circumstance, event, occurrence, physical object or appearance, as stated or described by a witness before a judicial tribunal.

Facts are the sources or materials of evidence; evidence is the medium by which facts are presented. Again, facts are the results of evidence, and, as such, are often distinguished from it. See *Special verdict*.

According to Mr. Bentham, a fact is either a state of things, that is, an existence; or a motion, that is, an event. 1 *Jud. Evid.* 48. As to the distinction between a fact and a circumstance, see *Circumstance*.

FACTA. Lat. (pl. of *factum*, q. v.) In old English law. Deeds. *Facta armorum*; deeds or feats of arms, that is, jousts or tournaments. *Cowell.*

Facts. *Facta et casus*; facts and cases. *Bract.* fol. 1 v.

FACTIO. L. Lat. [from *facere*, q. v.] In old English law. A doing. Anciently applied to services done by a tenant. *Bract.* fol. 35 b.

FACTIO TESTAMENTI. Lat. In the civil law. The right, power or capacity of making a will; called *factio activa*. *Inst.* 2. 10. 6. *Id.* 2. 19. 4. *Cooper's notes*, *488. *Dig.* 28. 1. 3.

The right or capacity of taking by will; called *factio passiva*. *Inst.* 2. 10. 6. *Id.* 2. 19. 4. *Cooper's notes*, *ub. sup.*

FACTO. L. Lat. (abl. of *factum*, q. v.) In fact; by an act; by the act or fact. *Ipsa facto*; by the act itself; by the mere effect of a fact, without any thing superadded, or any proceeding upon it to give it effect. 3 *Kent's Com.* 55, 58.

FACTOR. In mercantile law. A mercantile or commercial agent, who buys and sells goods for others on commission.* 2 *Kent's Com.* 622. Otherwise called a commission merchant, and a consignee of goods, being generally the correspondent of a for-

sign house. *Id. ibid.* note. More commonly employed to sell than to buy, and hence also defined to be "an agent to whom goods are consigned or delivered for sale by, or for a merchant, or other person residing abroad, or at a distance from the place of sale." *Russell on Factors*, 1. *Story on Agency*, § 33.

A factor is distinguished from a broker by being entrusted with the possession, management and control of the goods, and by being authorized to buy and sell in his own name, as well as in that of his principal. *Russell on Factors*, 4. *Story on Agency*, § 33. 2 *Steph. Com.* 127. 2 *B. & Ald.* 137, 143. 2 *Kent's Com.* 622, note. See 11 *Howard's R.* 209.

FACTOR. In American law. A person in whose hands the effects of another are attached for debt. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed a *trustee* and *garnishee*. *Drake on Attachment*, § 451.

FACTORAGE. The allowance or commission paid to a factor by his principal. *Russell on Factors*, 1. *Tomlins*. More commonly termed *commissions*.

FACTORIZING PROCESS. In American law. A process by which the effects of a debtor are attached in the hands of a third person. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed *trustee process* and *garnishment*. *Drake on Attachment*, § 451.

FACTORY. In Scotch law. A power or commission given to a factor; a power of attorney. *Bell's Dict. vocc. Factor*, *Power of attorney*.

FACTUM. Lat. [from *facere*, to do, to make; L. Fr. *fait*, q. v.] In civil and old English law. A thing done; an act or deed. Sometimes distinguished from *gestum*, (q. v.) *Dig.* 50. 16. 58. *Occultum factum*; a secret act. *Bract.* fol. 137 b. *Initium facti*; the beginning of the deed. *Id.* *Ex uno facto*; from one act. *Id.* fol. 235. *Ex post facto*; from an after act; in consequence of a thing done afterwards. *Id.* fol. 11 b, 12.

Fieri non debet, sed factum valet, (q. v.) It ought not to be done, but if done, it is valid. See *Fieri*.

Factum a iudice, quod ad officium ejus non pertinet, ratum non est. An act done by a judge, which does not belong to his office, is not valid. *Dig.* 50. 17. 170. See *Broom's Max.* [69.]

Factum cuique suum, non adversario, nocere

debet. A party's own act should prejudice himself, not his adversary. *Dig.* 50. 17. 155, pr.

Factum infectum fieri nequit. A thing done cannot be undone. 1 *Kames' Equity*, 96, 259.

Factum negantis nulla probatio sit [est.] There is no proof incumbent upon him who denies a fact. *Cod.* 4. 19. 23. One is not bound to prove a negative.

Factum non dicitur quod non perseverat. That is not said to be done, which does not hold out. 5 *Co.* 396. *Shep. Touch.* (by Preston,) 391. An act which may be avoided as soon as done, is no act in law. 5 *Co.* 3.

Factum unius alteri nocere non debet. The act or deed of one man ought not to prejudice another. *Co. Litt.* 152 b.

FACTUM. Lat. and L. Lat. A culpable act; a fault. *Sine facto heredis*; without fault of the heir. *Inst.* 2. 20. 16.

An unlawful act; an act not founded in right or law; a wrongful act. See *Ex facto, De facto*.

A criminal act. *Factum*, in old English criminal law, was distinguished from *fortis*, as the principal act of a murder, in contradistinction to the acts of those who aided and abetted it. *Bract.* fol. 138, 139. See *Fortia. Fleta*, lib. 1, c. 27, § 18; c. 31, § 8.

FACTUM. L. Lat. In old English law. A deed; [a thing done in writing;] a conveyance or other written instrument, under seal, formerly otherwise termed *charta*, and by the civilians *litterarum obligatio*. *Co. Litt.* 35 b, 171 b. 2 *Stra.* 815. *Spelman.* 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. See *Charta, Deed. Factum simplex*; a deed poll. *Spelman. Factum indentatum*; a deed indented. *Id.* *Bracton* uses *factum* with *charta*, though not apparently as a synonyme. *De chartis regis et factis regum. Bract.* fol. 34. *Nec factum regis nec chartam. Id. ibid.* The *charta* was the expression and evidence of the *factum*, and hence the natural transition from the one term to the other, to signify the same thing. *Factum*, however, does not appear to have at first had the full meaning of *charta*, and hence the distinction made between them by Lord Coke. *Co. Litt.* 9 b. See *Deed*.

FACTUM. In testamentary law. The execution or due execution of a will. The *factum* of an instrument means not barely the signing of it, and the formal publica-

tion or delivery, but proof that the party well knew and understood the contents thereof, and did give, will, dispose and do, in all things, as in the said will is contained. 11 *Howard's R.* 354, citing 3 *Phillimore's R.* 179.

FACTUM. Lat. Fact, as distinguished from law. *Facti non juris.* Dig. 41. 2. 1. 3.

A fact. *Facta et casus.* Bract. fol. 1 b. *Factum probandum*; a fact to be proved, the principal fact in a case. *Factum probans*; a proving fact; a minor or evidentiary fact, from which another fact is inferred. *Wills, Circ. Evid.* 24. 1 *Greenl. Evid.* § 13. *Best, Evid.* 21, § 27. *Id.* 314, § 274. *Burr. Circ. Evid.* 119, 734, 735.

FACTUM. L. Lat. In old European law. A portion or allotment of land. *Spelman.*

FACULTY. [Lat. *facultas.*] Power or ability.

In Scotch law. A power founded on consent, as distinguished from a power founded on property. 2 *Kames' Equity*, 265.

In English ecclesiastical law. A privilege or special dispensation, granted to a man by favor and indulgence, to do that which, by law, he could not do. *Tomlins. Termes de la Ley. Cowell.*

FACULTAS PROBATIONUM NON EST ANGUSTANDA. The power of proofs [right of offering or giving testimony] is not to be narrowed. 4 *Inst.* 279.

FADERFIUM, Fadelstum. L. Lat. [Sax. *fæderfeh*; from *fæder*, father, and *feh*, a gift.] In old European law. A gift or portion which a woman's father or brother gave her on her marriage. *Spelman. LL. Longob. lib. 2, tit. 1, l. 4, cited ibid.*

FÆSTING-MEN, Fasting-men. In Saxon law. Pledges, sureties or bondsmen, which by custom were *fast* bound to answer for one another's peaceable behaviour. *Cowell. Ducange renders it vassals. Id. ibid.*

FAICT. L. Fr. Did. *Kelham.*

FAIDA, Feida. L. Lat. [Germ. *fēder, feide*; Sax. *fahd*, enmity, from *fah*, a foe; O. Sc. *feid*.] In old European law. A combination of kindred, to revenge the death of any of their blood against the killer and all his race. *Cowell, voc. Fæd.* A right or custom common to most of the nations of Europe during the middle ages, by which the relatives of a person injured or slain, took up his quarrel, (*susceperunt*

inimicitias), by placing themselves in a state of open and declared enmity against the wrong-doer and his family, and carrying on a species of private war for the purpose of obtaining the desired satisfaction or revenge. This custom, which is sometimes called *deadly feud*, (Sc. *deidlie feid*), was of Germanic origin, and prevailed on the continent and in England down to the time of the Norman invasion. According to the Saxon laws, it might be waived by a pecuniary compensation. Hence the old English proverb cited by Spelman; *Byhe spere of side, othe bær*, (buy spear off side, or bear;) i. e. buy exemption from war or carry it on. *Spelman, voc. Faída.* 1 *Robertson's Charles V. Appendix, Note xxi.*

FAILER. L. Fr. To fail; to neglect; to omit; to disappoint. *Kelham.*

FAILLITE. Fr. In French law. Bankruptcy. *Code de Com. art. 442, 580.* 4 *Man. & Gr.* 239, note. Failure; the situation of a debtor who finds himself unable to fulfil his engagements. *Civil Code of Louis. art. 3522.*

FAILURE OF RECORD. In practice. The failure to produce a record, after pleading it.* Where a defendant pleads any matter of record, and offers to prove it by the record, and the plaintiff denies that there is any such record, and the defendant has a day given him to bring in the record; if he fails to do so, or produces such a one as is no bar to the action, he is then said to *fail of his record*, and thereupon the plaintiff shall have judgment to recover, &c. *Termes de la Ley.*

FAIN. L. Fr. Hay. *Kelham.* Beach wood. *Id.*

FAINT (or FEIGNED) ACTION. In old English practice. An action was so called, where the party bringing it had no title to recover, although the words of the writ were true; a *false* action was properly where the words of the writ were false. *Litt. sect. 689. Co. Litt. 361. See Feigned action.*

FAINT-PLEADER. [L. Lat. *falsa placitatio.*] In old practice. A fraudulent, false, or collusive manner of pleading, to the deceit of a third person. *Termes de la Ley. Stat. 34 & 35 Hen. VIII. c. 24. Cowell.*

FAIR. [Fr. *feire, feyre*; Lat. *feria, nundina.*] A larger sort of market instituted in England for the greater convenience of domestic trade and commerce, and held at certain times of the year, either by grant

from the crown, or by prescription which supposes a grant. 2 *Inst.* 220. 1 *Bl. Com.* 274. *Tomlins.* According to Lord Coke, every fair is a market, but every market is not a fair. 2 *Inst.* 406. The privilege of having a fair is a franchise, which may be held by a town or an individual. 1 *Crabb's Real Prop.* 525, § 679, *et seq.* 2 *Steph. Com.* 14, 15.

FAIR PLEADER. See *Beaupleader.*

FAIRE, *Faire, Fere, Fer.* Fr. and L. Fr. [Lat. *facere.*] To make or do. *Faire sa ley*; to make his law. *Britt.* c. 27. *Faire satisfaccion.* *Id.* c. 110. *Faire gree*; to make satisfaction. *Id.* c. 75. *Faire la foi*; to make faith; to do fealty. *Guyot, Inst. Feod.* ch. 2.

To do, or commit. *Sauns fraude faire*; without doing fraud. *Britt.* c. 16.

FAISANT. L. Fr. [from *faire*, q. v.] Doing. See *Feasant.*

FAIT, *Fet.* L. Fr. [from *faire*, (q. v.); L. Lat. *factum.*] A deed, (conveyance.) *Co. Litt.* 35 b, 121 b. *Fait endent*; a deed indented. *Litt.* sect. 217, 370. *Fait polle*; a deed poll. *Id.* sect. 218. Matters *en fait* (in deed) are distinguished by Lord Coke from matters of record. *Co. Litt.* 380 b.

An obligation for the payment of money. *Keilw.* 34 b, pl. 1.

A deed or act. *Chescun respoyne pur son fait*; every one shall answer for his act. *Britt.* c. 27. *Ou le fait fuit fait*; where the deed was done. *Yearb. H.* 3 Hen. VI. 14.

Fact. *Femme de fait*; a wife in fact, (or *de facto.*) *Britt.* c. 107.

Done. *Si le fait eyt este fait*; if the deed have been done. *Id.* c. 27. See *supra.*

FAITH. In Scotch law. A solemn pledge; an oath. "To make faith" is to swear with the right hand uplifted, that one will declare the truth. 1 *Forbes' Inst.* part. 4, b. 235. This phrase seems to be the literal translation of *affidare*, (q. v.)

FAITOURS, *Faitures.* L. Fr. Evil doers; idle persons; vagabonds or vagrants. *Stat. 7 Ric. II.* c. 5. *Termes de la Ley.* *Kelham. Blount.*

FAITZ. L. Fr. Deeds; feats. *Kelham.*

FAIX. L. Fr. False. *Kelham.*

Times. *Id.*

A burden, or load. *Id.*

FAIZ. L. Fr. Deeds; facts; business. *Kelham.*

FALAIZE. L. Fr. A bank or hill by the sea-side. *Kelham.*

FALCARE. Lat. [from *falx*, a scythe.] In old English law. To mow; to cut. *Falcare prata*; to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants. *Kennett's Gloss. Herbarum falcare. Reg. Orig.* 94. *Jus falcandi*; the right of cutting. *Bract.* fol. 231. *Fleta*, lib. 4, c. 19, § 6. *Falcata*; grass fresh mown, and laid in swathes. *Kennett's Gloss.*

Falcatio; a mowing. *Bract.* fol. 35 b, 320.

Falcator; a mower; a servile tenant who performed the labor of mowing. *Kennett's Gloss. Falcatores*; mowers. *Fleta*, lib. 2, c. 73, § 4.

Falcatura; a day's mowing. *Kennett's Gloss.*

FALCIDIA LEX. In Roman law. The Falcidian Law. *Inst.* 2. 22. *Dig.* 35. 2. *Cod.* 6. 50. See *Falcidian Law.*

FALCIDIAN LAW. [Lat. *Lex Falcidia.*] In the civil law. A law enacted on motion of Publius Falcidius, tribune of the people, A. U. C. 714, by which a testator was forbidden to give more, in legacies, than three-fourths of all his effects, (*quæ cavetur ne plus legare liceat quam dodrantes totorum bonorum*;) or, in other words, requiring him to leave at least one-fourth of his estate to the heir. *Inst.* 2. 22, pr. *Cooper's Notes, in loc. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 22. *Calv. Lex.*

FALCIDIAN PORTION. In the civil law. That portion of a testator's estate which, by the Falcidian law, (q. v.) was required to be left to the heir, amounting to at least one-fourth.* *Hallifax, Anal.* b. 2, ch. 7, num. 18. 19. *Civil Code of Louis.* art. 1608. 1 *White's New Recop.* 106.

FALDA. L. Lat. [Sax. *fald*, an enclosure.] In old English law. A sheepfold, (*ovile.*) *Cowell. Spelman.*

A place in which any animals were shut up. *Id.*

The liberty of faldage, (q. v.) *Id. Libera falda*; free foldage. 1 *Leon.* 11.

FALDÆCURSUS. L. Lat. In old English law. A fold course; the course, (going or taking about) of a fold. *Spelman.* See *Faldagium.*

A sheep walk, or feed for sheep. 2 *Ventr.* 139.

FALDAGE. [L. Lat. *faldagium*, from *falda*, q. v.] In old English law. Foldage; the privilege of setting up and moving about in a field, a fold, (i. e. a moveable pen for sheep), for the purpose of manuring the ground. *Spelman, voc. Falda.* A privi-

lege which several lords anciently reserved to themselves in any fields within their manors, for the better manurance of the same, not only with their own but their tenant's sheep. *Id. Cowell.* This privilege on the part of the lords was called *falda libera*, (frank or free fold,) *cursum faldæ*, (course of fold, fold-course,) and in some old charters, *faldsoca*. The corresponding duty of the tenant was called *secia faldæ*, (suit of fold.) *Id. ibid.*

FALDARE. L. Lat. In old English law. To fold. *Faldari*; to be folded. *Fleta*, lib. 2, c. 73, § 5.

FALDATA. L. Lat. [from *falda*, q. v.] In old English law. A flock or fold of sheep. *Cowell.*

FALDFEY. Sax. [from *fald*, a fold, and *feh*, a fee.] A fee or rent paid by a tenant to his lord, for leave to fold his sheep on his own ground. *Blount.* See *Falda*.

FALDSOCA. Sax. [from *fald*, fold, and *soc*, liberty]. The liberty or privilege of foldage. See *Faldage*.

FALDWURTHI. *Faldwirthi.* Sax. [from *fald*, a station, or fixed abode, and *wurthi*, worthy.] In Saxon law. A person of proper age to be fixed in some certain decennary or friburg. *Spelman.*

FALERÆ. L. Lat. In old English law. The tackle and furniture of a cart or wain. *Blount.*

FALESIA. L. Lat. In old English law. A hill, bank, or down by the seaside. *Co. Litt.* 5 b. *Domesday.*

FALESTE. L. Fr. Thrown into the sea. *Britt.* c. 110, fol. 257 b. See *Kelham.*

FALL. In Scotch law. To lose. To fall from a right, is to lose or forfeit it. 1 *Kames' Equity*, 228. See *Cadere*.

FALSA DEMONSTRATIO. Lat. In the civil law. False designation; erroneous description of a person or thing in a written instrument. *Inst.* 2. 20. 30. *Dig.* 35. 1. 17. 1 *Mackeld. Civ. Law*, 169, § 175. See *Demonstratio*.

Falsa demonstratio non nocet, cum de corpore (persona) constat. False description does not injure or vitiate, provided the thing or person intended have once been sufficiently described. Lord Kenyon, C. J. 6 *Term R.* 676. Park, B. 11 *Mees. & W.* 189. Story, J. 2 *Story's R.* 291. 6 *Hill's* (N. Y.) *R.* 616. Mere false description does not make an instrument inoperative. *Broom's Max.* 269, [490.] 1 *Greenl. on Ev.* § 301. *Shep. Touch.* (by Preston,) 77, 99, 248. 4 *Kent's Com.* 267.

Applied to the description of a vessel in a policy. *Emerig. Tr. des Ass.* ch. 6, sect. 3.

Falsa demonstratione legatum non perimi [perimitur.] A bequest is not rendered void by an erroneous description. *Inst.* 2. 20. 30.

FALSA GRAMMATICA. L. Lat. False or bad grammar. **Falsa grammatica non vitiat concessionem.** False or bad grammar does not vitiate a grant. *Shep. Touch.* 55. 9 *Co.* 48 a. Neither false Latin nor false English will make a deed void, when the intent of the parties doth plainly appear. *Shep. Touch.* 87. *Wingate's Max.* 19, max. 13.

Falsa orthographia non vitiat chartam [concessionem.] False spelling does not vitiate a deed. *Shep. Touch.* 55, 87. 9 *Co.* 48 a. *Wingate's Max.* 19.

FALSA MONETA. Lat. In the civil law. False or counterfeit money. *Cod.* 9. 24.

FALSARE. L. Lat. [from *falsus*, q. v.] In old English law. To counterfeit. *Quia falsavit sigillum*; because he counterfeited the seal. *Bract.* fol. 276 b. \ *Falsarius*; a counterfeiter. *Towns. Pl.* 260.

FALSE ACTION. See *Faint action*.

FALSE CLAIM, in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. *Manwood*, c. 25. *Tomlins.*

FALSE FACT. In the law of evidence. The appearance or semblance of a fact; a fact existing only in statement, without any foundation in truth. *Burr. Circ. Evid.* 218, 219.

FALSE IMPRISONMENT. [L. Lat. *falsum inprisonamentum*.] An unlawful restraint of liberty. *Finch's Law*, b. 3, ch. 10.—A trespass committed against a person, by arresting and confining or imprisoning him without sufficient authority, as by doing so without some lawful warrant or process, or by executing a lawful warrant or process at an unlawful time, as on a Sunday.* 3 *Bl. Com.* 127. 3 *Steph. Com.* 480. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or even by forcibly detaining one in the public streets. 2 *Inst.* 589. No actual force is necessary to constitute a false imprisonment. If a man is restrained of his personal liberty by fear of a personal difficulty, that amounts to a false imprisonment. 7 *Humphrey's* (Tenn.) *R.* 43. See *United States Digest*, False Imprisonment.

The name of the action which lies for this species of injury. 3 *Bl. Com.* 138. *Tomlins*.

FALSE JUDGMENT. [*L. Lat. falsum judicium ; breve de falso judicio.*] In English law. A writ which lies to the courts at Westminster, to reverse the judgment of some inferior court not of record. 3 *Bl. Com.* 34, 406. *F. N. B.* 18. *Finch's Law*, b. 4, c. 47.

In old French law. An appeal of false judgment was where the party against whom a judgment was given, charged the judges or peers of the court with pronouncing a false judgment, and thereupon usually appealed or challenged them to the combat. *Esprit des Lois*, liv. 28, c. 27.

FALSE LATIN. In old practice. Ungrammatical Latin. Before the statute directing law proceedings to be in English, if a Latin word was significant, though *not true* or *good Latin*, yet an indictment, declaration or fine should not be impeached or quashed on account of it, as where the word *præfato* was used for *præfata*, and the like. But if the word was *not Latin*, nor allowed by the law as *vocabulum artis*, (a word or term of art,) but was insensible, there, if it were in a material point, as if *murdredum* was used for *murdrum*, in an indictment, or *burgariter* for *burglariter*, it made the whole vitious and insufficient. 5 *Co.* 121 b. See 4 *Mod.* 159. 5 *Id.* 281. 11 *Id.* 399.

FALSE PERSONATION. In criminal law. The offence of falsely personating another, or representing one's self to be another person, and acting in such assumed character, either with the view of obtaining some property or exercising some right belonging to such person, or with the view or effect of subjecting such person to some legal liability.* 4 *Steph. Com.* 181, 290. 2 *N. Y. Rev. St.* [676,] 563, §§ 48, 50. *Wharton's Am. Crim. Law*, § 2681, *et seq.*

FALSE PRETENCES. In criminal law. False statements or representations made with intent to defraud, for the purpose of obtaining money or property. See *Wharton's Am. Crim. Law*, § 2069, *et seq.*

FALSE RETURN. In practice. An untrue return made to process by the officer to whom it was delivered for execution; as that the party could *not* be found, when he might have been taken, or that he had *no goods*, (*nulla bona*), when property of

some kind could have been levied on. 1 *Tidd's Pr.* 309. 2 *Id.* 1032.

FALSE TOKEN. In criminal law. A false document or sign of the existence of a fact, used with intent to defraud, for the purpose of obtaining money or property. See 2 *N. Y. Rev. Stat.* [677,] 564, § 53. 13 *Wendell's R.* 87. 14 *Id.* 547. *Wharton's Am. Crim. Law*, § 2069, *et seq.*

FALESDAD. Span. In Spanish law. Falsity; an alteration of the truth. *Las Partidas*, part. 3, tit. 26, l. 1.

Deception; fraud. *Id.* part. 3, tit. 32, l. 21.

FALSEHOOD. In Scotch law. A fraudulent imitation or suppression of truth, to the prejudice of another. *Bell's Dict.* "Something used and published falsely." Lord Justice Clerk, 2 *Brown's R.* 78. An old Scottish *women juris*. *Id.* 77. "Falsehood is undoubtedly a nominate crime; so much so, that Sir George Mackenzie and our older lawyers used no other term for the falsification of writs, and the name 'forgery' has been of modern introduction." *Id.* 78. "If there is any distinction to be made between forgery and falsehood, I would consider the latter to be more comprehensive than the former." *Id. ibid.*

"**FALSELY**," in the Act of Congress, providing a penalty against any one who shall *falsely* make, forge, or counterfeit any silver coin,—implies that there must be a fraudulent or criminal intent in the act. 5 *McLean's R.* 208, 211.

FALSIFICATION. In equity practice. The showing an item in the debit of an account to be either wholly false, or in some part erroneous. 1 *Story's Eq. Jur.* § 525.

FALSIFY. [*L. Fr. fausser ; L. Lat. falsare, falsificare, falsum facere.*] To prove false; to avoid or defeat. *Perk.* 383. *Litt. sect.* 149. *Co. Litt.* 104 b. 1 *Co.* 62 b.

To reverse or avoid, as a verdict, or judgment. 4 *Bl. Com.* 390. 4 *Steph. Com.* 455.

In equity practice. To show, in accounting before a master in chancery, that a charge has been inserted which is wrong, that is, either wholly false, or in some part erroneous. *Pulling on Merc. Accounts*, 162. 1 *Story's Eq. Jur.* § 525.

In criminal law. To forge or counterfeit; to make false; to give a false appearance to a thing. See *Crimen falsi*.

FALSING. In Scotch law. False making; forgery. "Falsing of evidential," (evidential.) 1 *Pitc. Crim. Trials*, part 1, p. 85.

Making or proving false. See *Falsing of dooms*.

FALSING OF DOOMS. In Scotch law. The proving the injustice, *falsity*, or error of the *doom*, or sentence of a court. *Bell's Dict. Tomlins. Jacob.* The reversal of a sentence or judgment. *Skene de Verb. Sign. voc. Soc.* An appeal. *Bell's Dict.*

FALSONARIUS. In old English law. A counterfeiter; a maker of false or spurious money. *Falsionarii*; counterfeiters. *Bract.* fol. 117.

FALSO RETORNO BREVIUM, *Breve de. L. Lat.* A writ which formerly lay against the sheriff who had execution of process, for false returning of writs. *Reg. Jud.* 43 b.

FALSUM. Lat. In the civil law. A fraudulent imitation, perversion or suppression of truth; such as an imitation of another's handwriting, or an instrument or writing belonging to him; a cutting out of a part of a writing; (*si quis alienum chirographum imitetur, aut libellum vel rationes intercidat, vel describat.*) *Dig.* 48. 10. 23. See *Crimen falsi*. Called, in Scotch law, *falsehood*, (q. v.)

FALSUS. Lat. In old English law. False; erroneous; fraudulent. Applied to persons and things.

Falsus in uno, falsus in omnibus. False in one thing, false in every thing. Story, J. 1 *Sumner's R.* 329, 356. Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. *Id. ibid.*

This maxim is also frequently applied to the testimony of witnesses. It is a general rule that, where a witness deliberately and knowingly swears falsely in regard to one material fact, the jury are not bound to believe him in any of his statements, unless he is corroborated. But it is wrong to say that the jury are not at liberty to believe him. The maxim *falsus in uno, falsus in omnibus* does not operate to preclude the jury from believing the witness, if they choose to do so. 3 *Wisconsin R.* 645, 647. The maxim is to be applied by the jury, according to their own judgment, for the ascertainment of the truth; and is not a rule of law, in virtue of which the judge

may withdraw the evidence from their consideration, or direct them to disregard it altogether. 2 *Jones' (N. C.) Law R.* 257. To bring a case within the operation of this rule, the oath must be corruptly false, in regard to a matter material to the issue. 1 *Jones' Law R.* 251.

FAMA. Lat. In the civil and old English law. Fame; character or reputation. See *Famosus*.

Fame; report. *Fama patriæ*; fame of the country; report or common opinion, upon which a man might anciently be indicted. *Bract.* fol. 143. It must have arisen, however, *apud bonos et graves*, (among the good and grave; that is, persons of good character and influence.) *Id.*

FAMA. Span. In Spanish law. Character. *Las Partidas*, part. 7, tit. 6, l. 1.

FAME. See *Fama*.

FAMILIA. Lat. In the Roman law. A family, consisting of the servants, (*famuli*), or slaves, belonging to one common master. This was the ancient and proper sense of the term.* *Calv. Lex. Taylor's Civ. Law*, 443. See *Dig.* 21. 1. 25. 2. More than two were necessary to make a *familia*. *Dig.* 50. 16. 40. 3.

A family or household; including wife, children, servants and all others who lived in the same house, and in subjection to one head, (*qui sub unius potestate in eadem domo, natura vel jure vivunt.*) *Calv. Lex. Dig.* 50. 16. 195. 2. *Id.* 43. 16. 1. 16, 18. *Id.* 50. 16. 40. 2. Hence the term *pater familias*, (q. v.) It included the head of the family also. *Id.* 50. 16. 196, pr.

A family or connection of persons related by blood, and having a common descent. A *familia* was a subdivision of a *gens*. The latter embraced all of the same stock and *nomen*, though most remotely related; the former was more limited, and included especially the *agnati* or relations on the paternal side.* *Calv. Lex. Dig.* 50. 16. 195. 1, 4. See *Gens, Nomen*.

A family estate or inheritance. *Dig.* 50. 16. 195. 1. See *Familia eriscunda*.

Family, or family right; one of the three kinds of *status* or conditions of persons. It was applied to a *homo sui juris*, i. e. a Roman citizen who was entitled to enjoy and acquire civil rights in his own name, and to hold other persons in his power. 1 *Mackeld. Civ. Law*, 130, § 119.

FAMILIA. Lat. In old English law. A family or household, including servants, that is, hired persons (*mercenarii* or *conduc-*

titii), as well as bondmen, and all who were under the authority of one master, (*dominus*.) *Bract.* fol. 124 b, 171 b. *Bracton* uses the word in the original sense, as denoting servants or domestics. *Id. ibid.*

A portion of land sufficient to maintain one family; sometimes called a *hide* of land, sometimes a *manse*, sometimes *carucata* or plough-land. *Cowell. Spelman. Co. Litt.* 69 a. See *Hide*.

FAMILIA. Span. [from Lat. *familia*, q. v.] In Spanish law. A family; which might consist of domestics or servants. It seems that a single person owning negroes was the head of a family, within the meaning of the colonization laws of Coahuila and Texas. 9 *Texas R.* 156.

FAMILIÆ ERCISCUNDÆ, Actio. Lat. In the civil law. An action brought by co-heirs for the partition of their inheritance; (*quæ competit cohæredibus de dividenda hæreditate*.) *Inst.* 4. 6. 20. *Id.* 4. 17. 4. *Id.* 3. 28. 4. Answering to the modern writ of partition. *Cooper's Notes, in loc. Dig.* 10. 2. *Cod.* 3. 36. Otherwise termed *judicium familiæ heriscundæ*. 1 *Mackeld. Civ. Law*, 286, § 271. *Bract.* fol. 443 b. *Fleta*, lib. 2, c. 60, § 1.

FAMILIARES REGIS. L. Lat. Persons of the king's household. The ancient title of the "Six Clerks" of chancery in England. *Crabb's Hist. Eng. Law*, 184. 2 *Reeves' Hist.* 249, 251. *Familier de la chancery. Kelham.*

FAMOSUS. Lat. [from *fama*, character.] In civil and old English law. Relating to, or affecting character or reputation; defamatory, slanderous. *Cooke's Law of Defamation*, 483, Appendix, No. II. *Famosus libellus*; a publication affecting character; a libel. See *Libellus famosus, Libel*.

Of bad character or repute; infamous. *Inst.* 1. 26. 6.

FANAL. Fr. In French marine law. A large lantern, fixed upon the highest part of a vessel's stern. *Ord. Mar.* Appendix.

FANATIO. L. Lat. In old English law. The fawning season, or fence month (*mensis fanationis*), in forests. *Kennett's Gloss.*

FANG, Fangen. Sax. To take. See *Infangtheft*.

FARANDMAN. In Scotch law. A merchant stranger, (*peregrinus mercator*.) *Skene de Verb. Sign.* *Spelman* gives the word *faramannus*, from the laws of the

Burgundians, (tit. 54, § 2.) and derives it from Sax. *faran*, or *feran*, to travel.

FARDEL. [L. Lat. *fardella, ferdella*; from Sax. *feorth*, fourth, and *del* or *dal*, a part.] In old English law. The fourth, (or, according to some, the eighth) part of a yard-land. *Cowell. Blount. Spelman* makes it to be the fourth part, and considers all the words, *fardel, fardendel, fardingdel, fardingel, farthindel, and farundel*, as signifying the fourth part of any thing. *Spelman, voc. Fardella.*

FARDELLA. L. Lat. In old English law. A bundle, or pack; a fardel. *Fleta*, lib. 1, c. 22, § 10.

FARDINGDEAL, Fardingdel, Fardingel, Fardindel, Farthindel, Farundel. [L. Lat. *quadrantata terra*.] In old English law. The fourth part of an acre. *Cowell.* But *Spelman* considers it to be the same with *fardel*, (q. v.)

FARINARIUM. L. Lat. In old European law. A mill. *L. Salic.* tit. 32, § 3. *Spelman.*

FARISTEL. Sax. [from *far*, a way, and *stal*, a stall or stopping.] In Saxon law. A stopping or obstruction of ways. *Domesday.* Hence *forestall*, (q. v.) *Spelman.*

FARLEY, Farleu. In English law. Money paid by tenants in lieu of a heriot. *Cowell. Blount.* Sometimes written *Farliet*. 4 *Ad. & El.* (N. S.) 408. See *Heriot*.

FARLIEF. See *Farley*.

FARM, Fearme, Ferm, Firm. [L. Lat. *firma*; L. Fr. *ferme*; from Sax. *fearme, feorme*, food or provisions.] In English law. The rent of land held under lease, anciently reserved and paid in provisions, (*in eduliis*.) *Spelman, voc. Firma. Cowell, voc. Ferme.* 2 *Bl. Com.* 318. *Gilbert on Rents*, 2. Called by *Spelman, redditus annuarius.* See *Fearme, Feorme, Firma, Reditus, Rent*.

Rent reserved on a lease of land, payable in money; (L. Lat. *reditus pecuniarius*; Fr. *fermage*.) *Spelman, voc. Firma.* 2 *Bl. Com.* 318. *Dyer, C. J.* and *Brown, J. Plowd.* 195. "If it shall happen that the said annual rent and *farm* of £37 s. 4d. or any part thereof, be in arrear and unpaid." *Plowd.* 131. Called *blanche ferme*, or *fearme*, white farm, or white rent, (*alba firma, firma blanca*), to distinguish it from rent paid in provisions. *Spelman, ubi sup.* 2 *Bl. Com.* 42. See *Alba firma, Blanche ferme*.

A term in lands ; that is, an estate granted for a definite period, as for life or years, (usually for years,) on payment of a rent ; a lease of land ; the estate or interest of a lessee ; a leasehold interest in lands. "Possessed of the farm of a manor." *Dyer*, 110. "40 l. for the farm and occupation of the said lands." 3 *Leon*. 159, case 106. Anciently written *ferm*, (L. Lat. *firma*.) In this sense, the word (*firma*) is constantly employed by Bracton. "To let for a *ferm* or farm," (*ad firmam*.) *Bract*. fol. 12 b. "For (to) *farm*, or for life:" (*ad firmam, vel ad vitam*.) *Id.* fol. 41. "He let to (for a) *farm* for a term of years;" (*dimisit ad firmam ad terminum annorum*.) *Id.* fol. 59. "Saving to the lessee (fermer or farmer,) his *farm* and term;" (*salvo firmario firma et termino suo*.) *Id.* fol. 166 b. 1 *Reeves' Hist. Eng. Law*, 301, note. *Ferms* and *fermors* are used in the statute of Marlbridge, c. 23, s. 2, in the sense of *terms* and *lessees*. 2 *Inst.* 145. *Doct. & Stud.* 233, 234. The old action of *ejectione firmæ*, was for ejecting one from his *ferm* or *farm*, that is, his *term*. See *Ejectione firmæ*. Hence the expression "to let to *farm*," that is, for a *term*. See *To farm let*, *Firma*. This has continued to be the proper technical meaning of the word *farm* in English law, viz.: a term, a lease or leasehold estate; that which is held by a person standing in the relation of tenant to a landlord. *Bro. Abr. Grants*, 135. 2 *Chitty's Bl. Com.* 17, note. 6 *Term R.* 353. 1 *Crabb's Real Prop.* 69, § 87.

Land itself, let and held for a *term* on payment of rent, (*ipsum prædium elocatum*.) 2 *Bl. Com.* 318. *Spelman*, voc. *Firma*. *Gilb. Rents*, 2. "Sheep upon a *farm*." 1 *Leon*. 41.—A capital or chief messuage in a vill or town, with great demesnes belonging to it, that has been let or demised to another for life, for years or at will. *Dyer*, C. J. *Plowd.* 195. *Termes de la Ley*. *Cowell*.—In more modern language, a large tract or portion of land taken by a lease under a yearly rent, payable by the tenant. *Tomlins*. In this sense, *farm* is a collective word, consisting of many things, as a messuage, lands, meadows, pastures, woods, and other things appertaining thereto. *Id.* *Plowd. ub. sup.* Hence the common or popular significations of the term, now prevalent in England and America,—a tract of land, with suitable buildings, &c., taken, or hired for a certain *term*, at a certain rent, for the purposes

of cultivation;—a tract of land, occupied in tillage, or used for *cultivation*, whether held of another, or owned by the occupant;—a tract of land, devoted to other purposes than cultivation, as to the raising of stock, &c. By the name of *farme* or *ferm*, in this sense of a tract of land, houses, lands and tenements might formerly pass; though this is not now its technical meaning in English law. *Co. Litt.* 5 a. See 1 *Crabb's Real Prop.* 69, § 87, cited *supra*. In wills, the word is still construed according to its popular signification. 2 *Powell on Devises*, (by Jarman,) 191. 1 *Jarman on Wills*, 713, (609; Perkins' ed.) *et seq.*

In American law, *farm* denotes a tract of land devoted in part, at least, to cultivation, without reference to its extent, or to the tenure by which it is held. 2 *Binney's R.* 238. As to what passes by the word *farm*, see 5 *Pick. R.* 512. 18 *Id.* 553. 6 *Metcalfe's R.* 529. 4 *Greenleaf's R.* 14. 2 *Hilliard's Real Prop.* 338, 343, 345.

In old English law. Any other thing than land, which is held in lease. *Dyer*, C. J. *Plowd.* 195. See *infra*.

* * The present meaning of the word *farm* is very properly termed by Sir Wm. Blackstone, the result of "a gradual departure from the original sense;" its successive gradations of meaning appearing from the definitions above given, viz.: provisions,—rent paid in provisions,—rent paid in money, or generally,—a term in lands, held on rent,—land itself, held for a term and rent,—land held or hired for a term, for cultivation,—any land used for cultivation, whether hired or owned. By this process, the idea of *cultivation* has become the prominent one in the modern acceptance of the term; so much so, indeed, as to give rise to the modern words now in common use; "*to farm*," to cultivate land; "*farming*," the business of cultivation. In England, however, the ideas of a lease, a term, and a rent, continue to be in a great degree inseparable, even from the popular meaning of a *farm*, as they are entirely so from the legal sense. The ordinary expression "*to farm out*," is an instance of the perpetuation of the same meaning.

That rents were originally and generally reserved and paid for in *provisions*, (*feorme*,) is very clearly shown by *Spelman* from the Black Book of the Exchequer, Domesday Book, and other ancient sources. The gradations of meaning from this primitive

one, (already noticed,) do not, however, seem to have followed in the order of time. *Firm* (*firma*) was used in the sense of *land leased*, by a chronicler of the time of William Rufus, A. D. 1089. *Spelman*, *voc Firma*. The same word (*firma*) occurs in the sense of a *lease of land*, in the early historian Ingulphus. *Id. ibid.* And even the Saxon *feorme* was used in Saxon times to denote a manor. *LL. Aluredi*, c. 2, cited *ibid.*

Farm, or *ferm*, has been derived by some from the Lat. *firmus*, firm, or fixed; as denoting a fixed rent, or term. *Lib. Nig. Scacc.* cited in *Spelman*. *Cowell*, *voc. Ferme*. *Bacon's Works*, iv. 217. Mr. Reeves inclines to derive it from the Ital. *fermo*, a bargain or contract. 1 *Reeves' Hist. Eng. Law*, 301, note. It is clearly, however, the Saxon word *feorme* or *feorme*, (provisions,) with a slight change in the letters. *Spelman*, *voc. Firma*. See *Feorme*.

FARM. In old English law. A lease of other things than land, as of imposts. There were several of these, such as "the sugar farm," "the silk farm," and farms of wines and currants, called "petty farms." See 2 *Hov. State Trials*, 1197—1206.

The *sugar farm* was a lease granted of the impost upon sugar, for a term of years, at a certain rent. *Id.* 1206. "Whereas G. H. held the *farm* of sugars upon a rent of 10,000 marks per annum, the Lord Treasurer procured him to surrender that lease." *Id.* 1196. The rent was called the *sugar farm-rent*. *Id.* 1206. As to the silk farm and silk farm-rent, see *Id.* 1204. The lessees were termed *farmers*. *Id.* 1197.

FARMER, (anciently **FARMOR** and **FERMOR**.) [L. Lat. *firmarius*; L. Fr. *fermer*, qq. v.] In English law. One who held or hired lands for a term, (*ad firmam*.) on payment of a rent; (*prædii conductor*.) 3 *Bl. Com.* 318. *Spelman*, *voc. Firma*. A renter of lands, (*terræ tenens*.) *T. Jon.* 156. "A man's farmer committed waste." *Bacon's Read. Us. Works*, iv. 206. "Termor and farmer." 1 *Leon.* 49. "Tenant and farmer." 1 *H. Bl.* 5.—A lessee for life, years, or at will. *Termes de la Ley*. *Dyer*, 59. 5 *Co.* 60, *Lord Mountjoy's case*. Hence, by derivation, the modern meanings,—a lessee or hirer of land for cultivation; a cultivator of hired land; a cultivator of land generally. See *Farm*.

A lessee of other things than land. A

lessee may be said to be a *farmer* of whatever thing he has in lease. *Dyer*, C. J. *Plowd.* 195. *Stat. Marlbr.* c. 23, [24,] cited *ibid.* A farmer of the king, that is, of the revenue. *Perkins*, ch. 1, sect. 5, B. See 1 *Leon.* 19. 3 *Id.* 237. A lessee of revenue. "The farmers of the petty farms of wines and currants having sustained great loss in their farm." 2 *State Trials*, 1197. See *Ferm*, *Fermor*.

To **FARM LET**. [L. Lat. *ad firmam locare*, to let to farm.] In conveyancing. Words of operation in leases, introduced at an early period in England. *Dimissio, concessio, et ad firmam traditio*; have demise, granted, and to farm let. *Co. Litt.* 45 b. 2 *Bl. Com.* 317. They are still generally retained, although not indispensable to the effect of a demise. 1 *Steph. Com.* 476, 477.

* * The English expression, *to farm let*, is clearly taken from the Latin, the order, even, of the words being literally followed; so closely, indeed, as sometimes to convey a wrong idea of the meaning. Thus, "to farm" is treated as a verb, and defined "to yield a return or rent." *Holthouse*. It is, however, obviously merely a very literal translation of the Latin words *ad firmam*, which might be more accurately as well as intelligibly rendered, "for a farm," that is, for a term. See *Farm*, *Firma*, *Ad firmam*. The expression "to put to farm," (*ad firmam ponere*), "to give to farm," (*ad firmam dare*), occur in records of the reigns of William Rufus, and Henry I. *Spelman*, *voc. Firma*.

To **FARM OUT**. To let for a term, at a certain rent. Usually applied to the farming of revenues.

FARUNDEL. See *Fardel*.

FARVAND. Norw. [from *fare*, to travel, and *vand*, by water.] Passage by water. 18 *C. B.* (9 *J. Scott*), 880.

FAS. Lat. Right, justice; the divine law. 3 *Bl. Com.* 2. *Calv. Lex*.

FASTERMANS, *Fastermannes*. In Saxon law. Sureties or securities; bondsmen. *LL. Edw. Conf.* c. 39, cited in *Spelman*. See *Fastingmen*.

FASTI, (pl. of *Fastus*, lawful.) Lat. In the Roman law. Lawful. *Dies fasti*; lawful days; days on which justice could lawfully be administered by the prætor. See *Dies fasti*.

Fatetur facinus qui judicium fugit. He confesses his guilt, who flies from judgment, (or shuns a judicial trial.) 5 *Ca*

109 b, Foxley's case. 11 Co. 60 b, Dr. Foster's case. This maxim of the old law of criminal evidence has been, in later times, much limited and qualified. Flight is not now regarded as conclusive evidence of guilt, but only as a circumstance which it is always of importance to take into consideration, and which, combined with others, may afford strong evidence of guilt; but which, like any other piece of presumptive evidence, it is equally absurd and dangerous to invest with infallibility. *Best on Pres.* § 248. *Burr. Circ. Evid.* 472, 473.

FATUITAS. Lat. [from *fatuus*, q. v.] In old English law. Fatuity; idiocy. *Reg. Orig.* 266.

Folly. *Bract.* fol. 99 b.

FATUITY. [Lat. *fatuitas*.] Idiocy. *Stock on Non Compos.* Intro. 4—6.

FATUM. Lat. In the civil law. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention. See *Damnum fatale*.

FATUOUS PERSONS. Idiots. *Bell's Dict.* Jacob.

FATUUS. Lat. In old English law. An idiot or fool. *Bract.* fol. 420 b. *Fatuu et idiota.* *Reg. Orig.* 266.

Foolish; absurd, indiscreet or ill-considered. *Fatum judicium*; a foolish judgment or verdict. *Bract.* fol. 289. Applied to the verdict of a jury, which, though false, was not criminally so; or did not amount to perjury. *Id. ibid.*

FAUCES TERRÆ. Lat. Narrow headlands and promontories, enclosing a portion or arm of the sea within them, [as in a gorge, *fauces*.] 1 *Kent's Com.* 367, and note. *Hale, De Jure Maris*, 10. Story, J. 1 *Story's R.* 251, 259.

FAULT. [Lat. *culpa*.] In the civil law. Negligence; neglect; omission of care. See *Culpa*.

FAUSENERIE, *Fausinerie*. L. Fr. Forgery. *Britt.* c. 4.

FAUSEUR. L. Fr. A forger, or counterfeit. *De fauseours de seals, et de monoye.* *Britt.* c. 4.

FAUSER, *Fauzer, Faucher*. L. Fr. To falsify; to counterfeit or forge. *Kelham*.

FAUSINE, *Fausyn*. L. Fr. Forgery or counterfeiting. *Britt.* c. 4, 22.

FAUTOR. Lat. [from *favere*, to favor; L. Fr. *fautour*.] In old English law. A favorer, or supporter of others; an abettor. *Cowell.* Jacob. One who encouraged resistance to the execution of process. *Stat. Westm.* 2, c. 39.

FAUX, *Falz, Fause, Faix*. L. Fr. In old English law. False; counterfeit. *Faux action*; a false action. *Litt. sect.* 688. *Faux money*; counterfeit money. *Stat. Westm.* 1, c. 15. *Faux peys*; false weights. *Britt.* c. 20. *Faux serement*; a false oath. *Stat. Westm.* 1, c. 38. *Yearb. M.* 8 Edw. III. 43.

FAUX. Fr. In the civil law. The fraudulent alteration of the truth. The same with the Lat. *falsum* or *crimen falsi*, (qq. v.)

FAUXER, *Fauser, Faucher*. L. Fr. To falsify; to forge or counterfeit. *Fauxer le seal le roy.* *Stat. Westm.* 1, c. 15.

FAVOR. [Lat. *favor*, from *favere*, to favor.] Partiality; bias; affection. See *Challenge*.

FAVORABILIS. Lat. Favorable; entitled to favor; favored. *Favorabilia in lege sunt fiscus, deus, vita, libertas*. Things favored in law are the treasury, dower, life, and liberty. *Jenk. Cent.* 94. *Favorabiliores rei potius quam actores habentur*. Defendants are regarded as more entitled to favor than plaintiffs. *Dig.* 50. 17. 125. *Broom's Max.* [562.] *Libertas omnibus rebus favorabilior est*. Liberty is more entitled to favor [more favored] than any thing. *Id.* 50. 17. 122.

"FAVOUR OF LAW. What mean I by that? The law is equal and favoureth not. It is true, not persons; but things or matters it doth favour." *Bacon's Arg.* Case of the Postnati of Scotland; *Works*, iv. 345. See maxims under *Law*.

FAZ. L. Fr. Make. *Kelham*.

FE. L. Fr. Fee. *Kelham*. See *Fee*.

FEAL. L. Fr. Faithful. *Britt.* fol. 1.

FEALTY. [L. Fr. *feaulté*; Fr. *foi*; L. Lat. *fidelitas*.] In feudal and English law. Fidelity; the feudal obligation by which the tenant or vassal was bound to his lord, to be faithful and true to him, and to perform the services incident to his tenure.* 1 *Bl. Com.* 367. 2 *Id.* 45.—The bond of fidelity, obedience and service, by which, generally, a subject is bound to his sovereign, particularly a vassal to his lord; (*fides, obsequii, et servitii ligamen, quo generaliter subditus regi, particulariter, vassallus domino astringitur.*) *Spelman*, voce. *Fideles, Fidelitas*. General fealty is otherwise, and more commonly, called allegiance. 1 *Bl. Com.* 367. See *Fidelitas*.

The oath itself, (*ipsum fidelitatis iusjurandum*), by which the feudal obligation

was assumed, and fidelity to the lord sworn by the tenant. *Spelman. Bract. fol. 80. Britt. c. 68. Feud. Lib. 2, tit. 4. Litt. sect. 130. Fleta, lib. 2, c. 6.* The distinction between these two senses of the word is not generally observed; the oath being considered as the obligation itself. 2 *Bl. Com.* 86. 3 *Steph. Com.* 508. 1 *Crabb's Real Prop.* 610, § 770. See the form of the oath, *Feud. Lib. 2, tit. 5, 6, 7. Fleta, lib. 3, c. 16, § 21.*

Fidelity was always considered as the essential feudal bond between lord and vassal, without which no feud could exist. *Fidelitas est de substantia feudi. Duarenus de Feud.* cited in *Cowell. Feudi substantia in sola fidelitate quæ est ejus forma essentialis, subsistit. Dumoulin, tit. des Fiefs, n. 115. Guyot, Inst. Feod. ch. 2. Wright on Tenures, 35, 55, 138. 3 Kent's Com.* 510. Hence it was always, in England, an indispensable incident to every kind of tenure, except frankalmoign. In modern times, however, it has fallen into disuse, and it is no longer the practice to exact its performance. *Hargr. Co. Litt. Note 20, lib. 2. 3 Kent's Com.* 511, 512. Even in theory, it is now confined to copyhold tenures, and is usually respited by a small payment by the tenant. 1 *Crabb's Real Prop.* 610, 611, § 770.

FEAR. [Lat. *metus, timor.*] Apprehension of harm. See *Metus*.

Apprehension of harm or punishment, as exhibited by outward and visible marks of emotion. An evidence of guilt in certain cases. See *Burr. Circ. Evid.* 476.

FEARE. L. Fr. To make. *Kelham.* See *Faire*.

FEARME. Sax. Food, provisions; a feast or entertainment; (Lat. *cibus, alimentum, cæna.*) *Fearme sillan*; to give food. *LL. Canut. par. 2, c. 68, cited Spelman, voc. Firma.* See *Farm, Feorme*.

FEASANCE, *Faisance, Feasaunce, Feasance, Feasans.* L. Fr. [from *faire, to do.*] A doing; the doing of an act. See *Malfeasance, Misfeasance, Nonfeasance*.

A making; the making of an indenture, release or obligation. *Litt. sect. 371. Dyer, 56 b, (Fr. ed.)* The making of a statute. *Keilw.* 1 b.

FEASANT, *Faisant, Fesaunt.* L. Fr. [from *faire, to do.*] Doing.

FEASOR. L. Fr. [from *faire, to do, to make.*] Doer; maker. *Feasors del estatute*; makers of the statute. *Dyer, 3 b. (Fr. ed.)*

FEAT. L. Fr. Done; a deed. *Kelham.* See *Fait*.

FEAW. L. Fr. Fire. *Kelham.*

FECIALES. Lat. An order or body (*collegium*) of priests or heralds among the Romans, whose office was to declare war and make peace. *Calv. Lex. Grotius de Jur. Bell. lib. 2, c. 23, § 4. 1 Kent's Com.* 6. *Brande.*

FEICIAL LAW. The law relating to declarations of war and treaties of peace among the Romans. So called from the *feciales*, (q. v.) who were charged with its execution.* 1 *Kent's Com.* 6. See *Jus feciale*.

FEDERAL. [from Lat. *foedus*, a league or treaty.] Founded upon or formed by a league, treaty, or compact between independent states. The government of the United States is a federal government, as being formed by the union of several independent states, each surrendering a portion of its power to the central authority. A federal is strictly distinguishable from a national government, (though in the United States the terms are often used indifferently,) the latter being properly an aggregation of individual citizens. The constitution of the United States is pronounced by Mr. Madison to be neither a national, nor a federal constitution, but a composition of both. *Federalist, No. 39.*

FEDERAL. In American law.. Belonging to the general government, or union of the states. Founded on, or organized under the constitution or laws of the United States.

FEE. An abbreviation of *Femme*, or *Feme*, (q. v.) *Britt. c. 93.*

FEE. L. Fr. and Eng. [L. Lat. *feodum, feudum*; Fr. *fief*; Scotch, *feu*; from Sax. *feh, feoh*, a stipend or reward.] In feudal law. A stipendiary estate, held of a superior by service.* 1 *Steph. Com.* 161. A right to the use of another's land, as a stipend for services to be performed.* *Id.* 163. *Spelman, voc. Feodum.*

Such estate or right, held as an inheritance.* *Id. ibid.*

The land itself, held of a superior by service.* *Id. ibid. Wright on Tenures, 19, 149. 2 Wooddes. Lect. 6.* See *Feodum, Feudum*.

In early English law. That which one holds of another by service, (*quod quis tenet ab alio.*) "As if one should say, such a one holds of me so many fees, by knight-service;" (*ut si quis dicat, talis tenet de me*

tot feoda per servitium militare.) *Bract.* fol. 263 b. *Fleta*, lib. 5, c. 5, § 27. 2 *Bl. Com.* 105. 1 *Steph. Com.* 219.

That which one holds by any title to him and his heirs; (*id quod quis tenet ex quacunque causa sibi, et hæredibus suis.*) *Bract.* fol. 263 b. *Fleta*, lib. 5, c. 5, § 27. *Britt.* c. 79.

A certain quantity of land, held on condition of service, or held as an inheritance. "He holds so many fees." *Bract. ub. sup.* "To enter one's fee;" (*feodum intrare.*) *Id.* fol. 46, 263 b. *Artic. Cleri*, c. 9. The same as to enter into one's tenement. *Bract.* fol. 46 b. "To distrain one's fee;" (*distringere feodum.*) *Id.* fol. 263 b. *Britt.* c. 27. See *Knight's fee*, *Lay fee*.

A seignior, manor or lordship, as a district of territory or jurisdiction. *Mag. Chart.* 9 *Hen.* III. c. 2. "Out of his fee or seignior," (*extra feodum*, Fr. *hors de son fee.*) *Co. Litt.* 1 b. *Stat. Marlbr.* c. 2, 15. "In the same vill, and of the same fee," (*in eadem villa, et de eodem feodo.*) *Bract.* fol. 36. *Britt.* c. 21, 55.

An inheritance. "To hold in fee," (*in feodo.*) "In fee, or for life," (*in feodo, vel ad vitam.*) *Bract.* fol. 13 b, 29 b, 30, 31, 32, *et passim.* *Britt.* c. 79.

In modern law. An estate of inheritance. 2 *Bl. Com.* 106. *Litt.* sect. 1. *Co. Litt.* 1 b. See *Fee simple*. This is called by Blackstone the secondary meaning of the term, the primary and original one being, an estate held of a superior. 2 *Bl. Com.* 105, 106. It appears, however, to have been the more important meaning of the two, as early as the time of Bracton, who mentions it first in the order of his definitions. *Bract.* fol. 263 b. Both meanings are still, in England, essential to the idea of a fee, all lands being supposed to be held either mediately or immediately from the sovereign. 1 *Steph. Com.* 173. See *Tenure*. Fee, without other words, means fee simple. *Litt.* sect. 293.

In American law, a fee means an estate of inheritance belonging to the owner and transmissible to his heirs. 3 *Kent's Com.* 514. 4 *Id.* 3, 4.

FEE. [L. Lat. *feodum*.] A reward or compensation given to one for the execution of his office, or for professional services; as to a clerk, sheriff, attorney, counsellor, or other officer of a court. *Cowell*. This is the primitive meaning of the word, (Sax. *feh*, or *feoh*), from which Spelman derives the term *feodum* or *feudum* itself. *Spelman*, voc. *Feodum*.

* * * The word *fee* occurs in precisely its present form, in the law French of Britton, and is used without change by the best writers in that language, to the time of Littleton. *Feodum* (q. v.) is the Latin form, employed by Bracton, and other early English writers. The Lat. *feodum* and Fr. *fief* (qq. v.) are used in the feudal law of the continent. *Feu*, (q. v.) has always been peculiar to the law of Scotland. As to the ultimate derivation of the word, (of which these are only different forms,) various opinions have been entertained. Cowell and the author of the *Termes de la Ley*, who are followed by Lord Coke, derive *fee* from the Fr. *fief*. *Co. Litt.* 1 b. Mr. Crabb considers it a corruption of *feud*. *Crabb's Hist. Eng. Law*, 382. Others derive it, through the Lat. *feodum*, from *fides*, (Lomb. and Ital. *fede*), faith or fidelity. *Feud. Lib.* 2, tit. 3, § 3. *Connanus*, cited in *Calv. Lex. Webster*. Others, from the Germ. *feh*, war. *Calv. Lex.* Others, again, from the Græco-Latin *emphyteusis* of the Roman law. *Palgrave's Rise*, &c. p. ccvi. 1 *Spence's Chancery*, 32, note. The most satisfactory derivation, however, both as to form and sense, is that adopted by Spelman, from the Sax. *feh*, or *feoh*, a stipend or reward. Taking *feoh* as the root, a slight change in the letters, and a much slighter one in the sound produce *feu*, the Scotch word. These two forms Latinized become *feodum* and *feudum* respectively; the letter *d* being introduced, as Spelman observes, for euphony. The French form *fief* is the same word *feu* in different letters, the change from final *u* to *f*, being a common and very natural one; as in the old word *farleu*, (q. v.) changed into *farlief*. In this way, all the old forms are very simply accounted for. In point of sense, on the other hand, the meaning of *feh* or *feoh*, (wages or reward,) accords entirely with the essential idea of the feudal grant of land. The objection to *emphyteusis*, as the origin of *fief* or *fee*, lies not more in the form than in the meaning; *emphyteusis* signifying not only a lease of land for agricultural purposes, but a lease for a very long term, if not in perpetuity, which is far from agreeing with the nature of the first feudal grants. See *Feud*, *Feudum*. Besides, if *emphyteusis* supplied the proper idea, it is difficult to see how these grants came to be so long called, (as they first were) *beneficia*. The same objection appears to be applicable to the word *fides*, as

the origin of *fee*, which is the opinion adopted by Webster. If *fides* (*faith*) constituted so essential an idea in the nature of the feudal grant, it is probable that such grant would have been at first called in Latin *feudum*, instead of *beneficium*, (q. v.) But the word *feudum* does not, according to the best authority, occur in records until the eleventh century, long after the establishment of the system. See *Feudum*.

If Spelman's opinion be correct, that the old Saxon was the more ancient dialect of the German, it may not be too much to assume that *feoh* was the primitive word used among the ancient Germans, to denote a stipend or reward, and would naturally be applied to any kind of property bestowed as a consideration for services. That grants of land in this shape were not unknown to the nations of Northern Europe at a very early period, appears strikingly (as Sir William Blackstone has observed) from what is recorded by the historian Florus of the Cimbri and Teutones on their irruption into Italy, about a century before the Christian era. It is said that they requested to have a grant of land made to them as a stipend, for which they would perform military and other services, (*ut martius populus aliquid sibi terræ daret quasi stipendium, cæterum, ut vellet, manibus atque armis suis uteretur.*) *L. Florus*, lib. 8, c. 3. It is not therefore unreasonable to suppose that when the feudal system came to be introduced, the grants of land under it were actually called, in the vernacular of those nations who were of German origin, *feohs* or *feus*. The adoption of the Latin word *beneficia* as the earliest appellation, on record, of the feudal grants, may be accounted for, on the ground of its more fully expressing what was then the leading idea of those grants, viz.: a thing bestowed by the mere *favor* of the giver or lord, and resumable by him at pleasure. *Feud. Lib.* 1, tit. 1, § 1. *Lib.* 2, tit. 23, § 1. It was also a pure and genuine Latin word, which may have recommended it at a time when the practice of framing barbarous Latin from Teutonic and other stocks had not become fully established. When, however, the feudal grants became hereditary, it was found necessary to adopt a new name, the estate of the tenant being of a more permanent and stable character than was properly expressed by the word *beneficium*. At this very point in history

the word *feudum* first occurs, a clearly barbarous or low Latin term; readily framed, we may suppose, by adding to the vernacular *feoh* or *feu*, the usual Latin termination. What strengthens this supposition is the fact that *feoh* now conveyed with great accuracy the leading idea of a feudal estate, viz.: an interest in land held as a stipend, wages or reward for military service, being in the nature of a consideration, or *quid pro quo*, and therefore considered more a matter of right, than *favor*. The first form of *feoh* or *feu* itself, as a term of law, seems to have been the French *fief*. See *Fief*. From this it is not improbable the word *fee* was formed by the Normans and introduced into England; the Scotch adopting, with less alteration of sound, the form *feu*. It may be added that the *eo* in the English *feodal*, *feoffment*, *enseoff*, and the L. Lat. *feodum*, *feoffamentum* and *feoffare*, points very distinctly to *feoh* as its origin, and indeed can be accounted for in no other way.

FEE-FARM. [*L. Fr.* *fee ferme*; *L. Lat.* *feodi firma*; *Sc.* *feu-ferme*; literally, the farm of a fee.] In English law. A tenure of lands in fee, at a certain farm or rent. *Mag. Cart.* 9 Hen. III. c. 27. *Id. Johan.* c. 37.—Land held of another in fee, in consideration of an annual rent, and without homage, [fealty,] or any other services than were actually specified in the deed of feoffment by which the estate was created. *Cowell. Britt.* c. 96. 2 *Inst.* 44. But, according to Spelman and others, fealty was due in any case. *Spelman, voc. Feodi firma. Termes de la Ley.*—An estate partaking of the character both of a lease (or farm,) and a fee; or, in other words, an estate in fee, subject to a perpetual (farm or) rent. *Hargr. Co. Litt.* Note 235, lib. 2. 2 *Bl. Com.* 43. 2 *Steph. Com.* 27. See *Feodi firma*. In the old books, franchises are said to be granted in or to fee farm. *Britt.* fol. 2. *Stat. Westm.* 1, c. 31. *Fleta*, lib. 2, c. 50, § 30.

FEE-FARM RENT. The rent reserved on granting lands in fee farm; the amount of which must have been at least one-fourth of the value of the lands at the time of its reservation. *Co. Litt.* 143 b. It might be one-third, or even one-half. *Spelman, voc. Feodi firma. Termes de la Ley.* Britton's words are, *a respondre pur eux par an le verrey value, ou plus ou meyns*; (to answer for them yearly the true value, more or less.) *Britt.* c. 66.

Some writers use *fee farm* to signify not only the estate itself (see *Fee farm*), but the *rent* reserved on it, taking the word *farm* itself in the sense of *rent*. *Hargr. Co. Litt.* Note 285, lib. 2. In that sense, the addition of the word *rent* is clearly superfluous. But as *farm* also signifies a lease, it seems to be more accurate to employ the expression *fee-farm* to denote the estate, and *fee-farm rent* the rent reserved out of it. See *Farm*.

FEE SIMPLE. [L. Lat. *feodum simplex*.] A pure fee; an absolute estate of inheritance; that which a person holds inheritable to him and his heirs forever. *Litt.* sect. 1. *Co. Litt.* 1 b. 2 *Bl. Com.* 106. *Termes de la Ley*. An estate to a man and his heirs forever. *Hale's Anal.* sect. xxx. See *Fee*. Called *simple*, that is, *pure*, because clear of any condition, limitation, or restriction to particular heirs; being descendible to the heirs general, whether male or female, lineal or collateral. 2 *Bl. Com.* 106. *Co. Litt.* 1 b, 2 a. See *Simple*. *Fee*, however, itself, without the addition of the word *simple*, imports the same thing. *Litt.* sect. 293. *Spelman*, voc. *Feodum*. It is the largest estate and most extensive interest that can be enjoyed in land, being the entire property therein. 2 *Bl. Com.* ub. sup. *Litt.* sect. 11. *Spelman*, voc. *Feodum*. 4 *Kent's Com.* 5. It is created in deeds by the word "*heirs*," (to such a person *and his heirs*), which is the proper, and, at common law, the indispensable word for that purpose, and cannot be supplied by any other, even "*heir*" in the singular. *Co. Litt.* 8 b. 2 *Preston on Estates*, 8. But see 4 *Kent's Com.* 5, note. So that, if a conveyance be "to a man forever," or "to a man and his assigns forever," or "to a man and his heir," he will have but an estate for life. *Termes de la Ley*. *Wharton's Lex.* 4 *Kent's Com.* 5, 6. This rule, however, has been modified in regard to wills; and, in American law, in some cases entirely abolished by statute. *Id.* 6—8, and notes. 1 *Hilliard's Real Prop.* 609. See *Heirs*.

FEE TAIL. [L. Fr. *fee taille*; L. Lat. *feudum talliatum*; from Fr. *tailleur*, to cut.] A limited or restrained fee; literally a *cut* fee. An estate of inheritance limited and restrained to some particular heirs of the person to whom it is granted, in exclusion of others. 2 *Crabb's Real Prop.* 22, 23, § 971. Called *tail*, that is, *cut*, according to some, because cut, clipped, or pared

down (*amputatur et rescinditur*), to certain heirs. *Spelman*, voc. *Feodum*. 8 *Co.* 27. *Cowell*. And this accords with the meaning of *feudum talliatum* among the feudists; a mutilated or truncated inheritance, a fee curtailed of its proper quantity or extent. According to others, because it is a particular estate *cut out* of the old conditional fee simple, by the operation of the statute *de donis*. *Crabb's Hist.* 177. 2 *Bl. Com.* 112. 1 *Steph. Com.* 228. 2 *Crabb's Real Prop.* 21—23, §§ 970, 971. As to fees tail in American law, see 4 *Kent's Com.* 14—19, and notes.

FEEL. L. Fr. Faithful. *Kelham*.

FEET, *Feat*. L. Fr. Made; done. *Kelham*.

FEEZ, *Feetz*. L. Fr. Pensions; fees. *Kelham*.

FEEZ. L. Fr. Times. *Kelham*. *Autre feez*; heretofore. *Id.*

FEFFE. L. Fr. A feoffee. *Britt.* c. 34, 42.

FEFFEMENT, *Fefment*. L. Fr. A feoffment. *Britt.* c. 34, 47. *Mem. in Scacc.* P. 23 Edw. I.

FEFFOUR. L. Fr. A feoffor. *Britt.* c. 34, 42.

FEGANGI. [from Sax. *feh*, money or goods, and *gange*, to go.] In old European law. A thief caught in the act of going off with the thing stolen. *LL. Longob.* lib. 1, tit. 25, l. 2. *Spelman*.

FEL. L. Fr. Faith. *Kelham*.

FEIGNED ISSUE. In practice. An issue produced in a pretended action between two parties, for the purpose of trying a single question of fact, which it becomes necessary to determine in the progress of a cause.* It is frequently directed by a court of chancery, to determine the fact of adultery, of the validity of a will, &c., and sometimes, though rarely, by a court of law. The issue is produced upon a declaration, and plea; the plaintiff declaring, by a fiction, that he laid a wager of so much with the defendant, that a certain fact was so, and then avers that it is so, and therefore demands the sum wagered; the defendant admitting the feigned wager, but denying that the fact is so. Issue is thereupon joined as to the fact, and brought to trial like any other issue of fact, and the verdict of the jury determines the question. 3 *Bl. Com.* 452.

This has sometimes been defined a *fictional issue*. The fiction, however, is not in the issue, which is real, as are the plead-

ings; but in the *action* which is supposed to be brought, and in the state of facts (the *wager*), upon which it is founded, which in reality have no existence. By the English statute 8 & 9 Vict. c. 109, s. 19, any question of fact may now be referred to a jury, by any court either of law or equity, in a direct form, in lieu of a feigned issue. 4 *Steph. Com.* 28.

FEINT ACTION. See *Faint action*.

FEISOR. L. Fr. A doer; an actor; one who does a criminal act; an offender. *Yearb. Add. T. 2 Edw. III. 14, 17. Feisours*; makers. *Kelham*.

FELAGUS. L. Lat. [from Sax. *fe*, faith, and *lag*, bound.] In Saxon law. One bound or pledged for another. A friend who was bound in the decennary for the good behaviour of another; called by Spelman *socius individuus*, and *vita comes*; an inseparable companion, or companion for life. Spelman, in voc. A sworn brother. *LL. Will. Cong.* cited in *Blount*. The *felagus* was a very important person in the Saxon law, and took the place of a man's parents or lord, where he had neither. *LL. Edw. Conf.* cc. 15, 35. From this word, changed into *felawe* by the Anglo-Normans, Spelman derives the word *fellow*.

FELE, Feal. L. Fr. Faithful. See *Feal*.

FELO. L. Lat. A felon. *Bract.* fol. 30. See *Felon. Fleta*, lib. 1, c. 28, § 11. *Id.* lib. 3, c. 10, § 2.

FELO DE SE. L. Lat. [L. Fr. *felon de luy mesme*.] A felon of himself; a self murderer. *Finch's Law*, lib. 3, ch. 20. One who deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death; as if, attempting to kill another, he runs upon his antagonist's sword, or shooting at another, the gun bursts, and kills himself. *Hawk. P. C.* b. 1, ch. 27. 1 *Hale's P. C.* 413. The party must be of years of discretion, and in his senses, else it is no crime. 4 *Bl. Com.* 189. 4 *Steph. Com.* 109.

* * Suicide (in the sense of intentional self destruction,) has always been regarded as a crime in English law, punished with forfeiture of goods and chattels, and, until recently, branded by an ignominious burial in the highway, with a stake driven through the body. 4 *Chitty's Bl. Com.* 190. By the act of 4 Geo. IV. c. 52, § 1, this barbarous kind of burial was abolished, and the bodies of suicides were directed to be

interred in churchyards, or other ordinary burial grounds, but under marked circumstances indicative of the law's abhorrence of the crime; the interment being ordered to take place *at night*, and without the performance of any *Christian rites*. *Id.* *ibid.* note. Suicide does not seem to be regarded as a crime in the United States.

FELON. L. Fr. and Eng. [L. Lat. *felo*.] One who has committed, or is guilty of felony. See *Felony*.

FELONIA, Fallonia. L. Lat. Felony. *Bract.* fol. 29 b, 30. In *felonia*; feloniously. *Id.* fol. 121, 138, 146. *Felonia de seipso*; felony of himself. *Id.* fol. 150.

In the feudal law. The act or offence by which a vassal lost or forfeited his fee. *Fallonia est culpa seu injuria propter quam vasallus amittit feudum. Hostiens. de Feud. Spelman*, voc. *Felo. Calv. Lex* voc. *Fallonia*. It might also be committed by the lord against the vassal. *Feud. Lib.* 2, tit. 47.

Any capital crime. *Feud. Lib.* 2, tit. 26, § 24. *Hotom. de Verb. Feud.*

Felonia implicatur in qualibet proditione. Felony is implied in every treason. 3 *Inst.* 15.

FELONICE. L. Lat. Feloniously. Anciently an indispensable word in indictments for felony, and classed by Lord Coke among those *voces artis*, (words of art,) which cannot be expressed by any periphrasis or circumlocution. 4 *Co.* 39. *Ca. Litt.* 391 a. 4 *Bl. Com.* 307. Bracton uses the expression in *felonia*, which means the same thing. See *Felonia*.

FELONIE. L. Fr. Felony. *Britt.* c. 1, 4, 5, 6, 20, 22. *Guyot, Inst. Feod.* ch. 12.

FELONIOUS. Having the quality of felony. See *Felony*.

Criminal. 2 *N. Y. Rev. St.* [702.] 587, § 31. 2 *Compiled Laws of Michigan*, 1568, sec. 19. This is rather the popular, than the technical meaning. In a late Ohio case, it was said that "under our criminal code, the word *felonious*, although occasionally used, expresses a signification no less vague and indefinite than the word *criminal*." Bartley, J. 4 *Ohio St. R.* 542.

FELONIOUSLY. [L. Fr. *felonisement*; L. Lat. *felonice*.] An indispensable word in modern indictments for felony, as *felonice* was in the Latin forms. 4 *Bl. Com.* 307. See *Felonia*. Made synonymous with

"*criminally*," by 2 *N. Y. Rev. St.* [702,] 587, § 81. 2 *Comp. Laws of Michigan*, 1568, sec. 19. 24 *Missouri R.* 380.

FELONIOUS HOMICIDE. In criminal law. The offence of killing a human creature of any age or sex, without justification or excuse. 4 *Bl. Com.* 188. There are two degrees of this offence, manslaughter and murder. *Id.* 190. 4 *Steph. Com.* 108, 111.

FELONISEMENT. L. Fr. Feloniously. *Britt. c.* 22.

FELONY. [L. Lat. *felonia*, *fallonia*; from Sax. *feh*, lief, feud, or fee; and Germ. *lon*, price or value; the cost of one's fee, (Lat. *pretium feudi*;) or from Sax. *fælen*, *felen*, to fail, offend. *Spelman.*] In feudal law. An act or offence on the part of the vassal, which cost him his fee; or, in consequence of which his fee fell into the hands of his lord, that is, became forfeited. See *Felonia*. Perfidy, ingratitude or disloyalty to a lord. *Guyot, Inst. Feod. ch.* 12.

* * The word *felony* is clearly derived from the *felonia* of the feudal law, though the latter, according to Dr. Wooddesson, rarely occurs in any ancient code. It is to be met with, however, in the collection of Sicilian laws by Lindenbrog, and more frequently in the Books of Feuds. *Feud. Lib.* 2, tit. 37, 38, 47. 2 *Wooddes. Lect.* 306, note. *Spelman*, voc. *Felo*. Though properly denoting merely the forfeiture of a fee, it seems to have acquired the same sense it bears in the common law, viz., a heinous crime of any sort. Hotoman (*de Verb. Feud.*) defines it to be any capital offence; (*quodvis capitale facinus*.) *Cowell.* See *Felonia*.

Of the two etymologies of this word given by *Spelman*, (*supra*), Sir William Blackstone has adopted that which derives it from the two words *fee* and *lon*. 4 *Bl. Com.* 95. Dr. Wooddesson prefers that from *fælen*, and considers the other derivation far fetched. 2 *Wooddes. Lect.* 306. It is a very judicious remark of the writer last quoted, on the subject of etymology, that "words are oftener deduced from some other single word, than from two or more." *Id. ibid.* The practice of dividing words into parts, and attempting to account for the formation of each part as a distinct and original element of composition, has often led to the most fantastic and absurd derivations. See *Agreementum*, *Testament*.

FELONY. [L. Fr. *felonie*; L. Lat. *fe-*

lonia.] In criminal law. An offence which occasions a total forfeiture of either lands or goods, or both. 4 *Bl. Com.* 95, 98.

An offence punishable by forfeiture, and also by death or other punishment. *Id. ibid.* See 4 *Ohio St. R.* 542. 1 *Wisconsin R.* 184, 188.

An offence punishable by death, or by imprisonment in a state prison. 2 *N. Y. Rev. St.* [702,] 587, § 30. 2 *Comp. Laws of Michigan*, 1568, sec. 18.

An offence punishable by imprisonment in a state prison. *Rev. Stat. of Wisconsin*, (1858,) 979. See 1 *Wisconsin R.* 184, 188. 1 *Parker's Crim. R.* 39.

* * This term, and its peculiar import of *forfeiture*, are derived from the feudal law, (*supra*;) and, in England, forfeiture is still the true criterion of felony. 4 *Bl. Com.* 97. 4 *Steph. Com.* 61. The punishment of death also enters, in a great degree, (though not necessarily nor uniformly,) into the idea of felony. 4 *Bl. Com.* 97, 98. Hence, Blackstone has defined it to be "an offence which occasions a total forfeiture of either lands or goods, or both, at the common law, and to which capital or other punishment may be superadded, according to the degree of guilt." *Id.* 95. In American law, forfeiture as a consequence of crime being generally abolished, the word *felony* has lost its original and characteristic meaning, and is rather used to denote any high crime that is punishable by death or imprisonment. See the New-York definition, *supra*. *United States Digest*, Felony. In a late Ohio case, it was said, "The term *felony* has no distinct and well-defined meaning, applicable to our system of criminal jurisprudence." Bartley, J. 4 *Ohio St. R.* 542. Felony is indeed, properly, rather a generic term, denoting a certain class of offences, than any one in particular. In England, it includes all capital crimes below treason, and, strictly, treason also. 4 *Bl. Com.* 95, 98. 3 *Inst.* 15.

FELONY, COMPOUNDING OF. See *Compounding felony*.

FEM. A form of writing *feme*, (q. v.) Frequent in Coke and other old writers.

FEME, Fem, Femme, Fam. L. Fr. [from Lat. *femina*.] A woman; a wife. *Si prent la feme à feme*; if he take the woman to wife. *Litt. sect.* 665. *Le baron et la feme sont forsque come une person en ley*; the husband and the wife are but one person in law. *Id. ibid.*

FEME COVERT, Femme Couverte. L.

Fr. [L. Lat. *femina co-operta*.] A married woman. 1 *Bl. Com.* 442. 2 *Steph. Com.* 298. See *Covert baron*, *Coverture*.

FEME SOLE. L. Fr. [L. *femina sola*.] A sole, single or unmarried woman.

FEME SOLE TRADER, (or MERCHANT.) In English law. A married woman, who, by the custom of London, trades on her own account, independently of her husband; so called, because, with respect to her trading, she is the same as a *feme sole*. *Jacob. Cust. of Lond.* cited 3 *Burr.* 1776. *Cro. Car.* 68.

The term is applied also to women deserted by their husbands, who do business as *femes sole*. 1 *Peters' R.* 105.

FEMELE. L. Fr. Female. *Soit masle soit femele*; be it male or female. *Britt.* c. 18.

FEMME. L. Fr. A woman or wife. *Britt.* c. 24, 102, 108. See *Feme*.

FENATIO, *Feonatio*. L. Lat. [from Fr. *faon*, a fawn.] In forest law. The fawning of deer; the fawning season. *Spelman*.

FENCE, (or FENSE.) In old Scotch law. To defend or protect by formalities. To "fence a court" was to open it in due form. Before proceeding with the trial, an officer proclaimed that the business of the court was now commencing, and interdicting all manner of persons from disturbing their proceedings. This was called *fencing*, q. d. defending or protecting the court against all intrusion or molestation. 1 *Pitc. Crim. Trials*, part 1, p. 75, and note. *Id.* p. 46, and note. A fenced court is called, in the old Scotch, "ane defensat court." *Id.* part 2, p. 330. See *Affirmare*.

FENCE MONTH. [L. Lat. *mensis prohibitionis*, *mensis vetitus*.] In forest law. The prohibited month. A period of thirty-one days in the year, during which time it is unlawful for any man to hunt in the forest, because at that time the female deer are fawning. This period commences fifteen days before midsummer, and continues until fifteen days after. It is also called *defence month*, for the same reason, *defence* meaning *prohibition*; or, according to some, because the deer are then to be defended from the annoyance of sportsmen and others. *Termes de la Ley. Manwood. Cowell. Spelman. Blount*.

"FENCES" pass under the word "land." 1 *Comstock's R.* 564. See *Rail-fences*.

FENGELD. Sax. [from *fen*, enemies, and *geld*, money or tribute.] In Saxon

law. Money or tribute exacted for the repelling of enemies. *Spelman. Cowell*.
FEOBLESCE. L. Fr. Weakness. *Kelham*.

FEOD. [L. Lat. *feodum*.] Supposed by some to be the primitive word expressive of a feudal grant or estate; and from which the Lat. *feodum* was immediately formed; (Sax. *feohod*, from *feoh*, a stipend, and *hod*, state or condition. *Spelman*. Or, *feodh*, from *fee*, a stipend, and *odh*, property. 2 *Bl. Com.* 45, note.) The better opinion, however, seems to be that *feodum* was formed simply from *feoh*, the primitive word; and that *feod* is merely the Anglicized form of *feodum*, as *feud* is of *feudum*. See *Feodum*, *Feoh*. It is not used by Blackstone, though its derivative *feodal* is uniformly. See *Feodal*, *Feudum*.

FEODA. (pl. of *feodum*, q. v.) In old English law. Fees. *Cum feodis et proficuis*; with the fees and profits. *Plowd.* 12 a, arg.

FEODAL. [L. Lat. *feodalis*.] Relating to, belonging to, or having the quality of a *feod*, *feud*, or fee; feudal. 2 *Bl. Com.* 44, *et passim*, in book 2, chap. 4. *Cowell*. This word is uniformly used by Blackstone in preference to *feudal*, probably after the example of the old writers, and the constant use of *feodum* in Bracton, the Register and Magna Charta, instead of *feudum*. So the Lat. *feodalis* generally occurs in the Scotch writers.

FEODAL ACTIONS. Real actions; so called in the old books, as originally relating to *feoda*, fees, or estates in land. *Mirr.* c. 2, § 6. 3 *Bl. Com.* 117.

FEODALITY, *Feudality*. [L. Lat. *feodalitas*.] Fidelity or fealty. *Cowell*. See *Fealty*.

FEODARY, *Feudary*. [L. Lat. *feudarius*.] In English law. An ancient officer of the court of wards, appointed by the master of that court by virtue of the statute 32 Henry VIII. c. 46. Abolished by stat. 12 Car. II. c. 24. *Cowell. Kennet's Gloss. ibid.*

FEODATORY, *Feudatory*. In feudal law. The grantee of a *feod*, *feud* or fee; the vassal or tenant who held his estate by feudal service. *Termes de la Ley*. Blackstone uses *feudatory*. 2 *Bl. Com.* 46.

FEODI FIRMA. L. Lat. In old English law. Fee farm; the farm of a fee. *Artic. Mag. Cart. Johan.* c. 27. In the charter of 9 Hen. III. it is written as one word, *feodifirma*.

Feodi firmarius; the lessee or farmer of a fee; a fee-farmer; one who held in fee farm. *Bract.* fol. 165 b. See *Fee farm*.

FEODUM. L. Lat. [from Sax. *feoh*, a stipend, or fee.] In old English law. A fee; the same as *feudum*. See *Fee*, *Feudum*. This is the word uniformly employed by Glanville and Bracton to denote an estate of inheritance, and an estate held of another by service, instead of *feudum*, which is invariably used by the continental feudists. *Spelman*. *Feodum est id quod quis tenet ex quacunque causa, sibi et hæredibus suis*; fee is that which one holds by any title, to him and his heirs. *Bract.* fol. 263 b. *Item dicitur feodum alio modo—quod quis tenet ab alio*; that also is called fee in another sense, which one holds of another. *Id. ibid.* *Fleta*, lib. 5, c. 5, § 27. *Feodum* is also the form used in the Register, and Magna Charta. *Reg. Orig.* 2, 3, 226. *Mag. Chart.* 9 Hen. III. cc. 32, 36. The same form is used by Littleton. *Feodum idem est quod hæreditas*; fee is the same as inheritance. *Litt.* sect. 1. *Spelman* uses *feodum* and *feudum* indifferently.

Feodum laicum; a lay fee. *Glanv.* lib. 13, c. 23. *Bract.* fol. 175. *Magna Charta*, c. 18. See *Lay fee*.

Feodum militis, or militare; a knight's fee. 2 *Bl. Com.* 62. 1 *Steph. Com.* 176. See *Knight's fee*.

Feodum improprium; an improper or derivative fee or feud. 2 *Bl. Com.* 58. See *Feudum improprium*.

Feodum proprium; a proper, pure and original fee or feud, regulated strictly by the old fundamental rules of feudal tenure and succession. 2 *Bl. Com.* 58. See *Feudum proprium*.

Feodum simplex; fee simple; a simple or pure fee. *Litt.* sect. 1. See *Fee simple*.

Feodum talliatum; fee tail; a fee entailed; a cut fee. *Litt.* sect. 13. See *Fee tail*.

* * *Feodum* has the merit of pursuing more closely than *feudum*, the form and sound of the primitive *feoh*, from which there is little doubt of its being framed, the *h* being changed into *d* for euphony (*feodum*, instead of *feohum*.) *Spelman*. *Wachter Gloss.* in voc. The proper meaning of *feodum* is obviously *fee*, although, (in consequence, probably, of the established meaning of *fee* in modern law

—an estate of inheritance,) some English writers, especially of late, have thought fit, by way of clearer distinction, to designate the ancient feudal grant as a *feod*. See *Feod*.

FEODUM. L. Lat. In old English law. A seigniorship or jurisdiction. *Fleta*, lib. 2, c. 63, § 4.

A fee; a perquisite or compensation for a service. *Fleta*, lib. 2, c. 7. See *Skene de Verb. Sign.*

FEOFFAMENTUM. L. Lat. [from *feoffare*, q. v.] In old English law. A feoffment; the gift of a fee; the act of enfeoffment. *Spelman*, voc. *Feoffare*. More commonly written *feoffamentum*, (q. v.)

FEOFFARE. L. Lat. To enfeoff. *Spelman*. See *Feoffare*.

FEOFFAMENTUM. L. Lat. [from *feoffare*, to enfeoff.] In old English law. A feoffment. *Bract.* fol. 12 b, 17 b, et *passim*. 2 *Bl. Com.* 310. *Charta de puro feoffamento est de simplici feoffamento, sine aliqua adiectione*; a charter of pure feoffment is a charter of simple feoffment, without any addition. *Bract.* fol. 33 b. *Fleta*, lib. 3, c. 14, § 1. See *Feoffment*, *Feoffare*.

FEOFFARE, Feoffare. L. Lat. [from Sax, *feoh*, a fee.] In old English law. To enfeoff; to give or bestow a fee; (*feodum dare*.) *Bract.* fol. 17 b, 29 b, 44 b. *Stat. Marlbr.* c. 6. *Et si taliter feoffatus aliquem ulterius inde feoffaverit, tenet feoffamentum*; and if one so enfeoffed, enfeoff another thereof over, the feoffment holds. *Bract.* fol. 17 b. *Si feoffavero A. et A. B. &c.*; if I enfeoff A. and A. B. &c. *Id.* fol. 81. *Feoffavi*; I have enfeoffed. This word, according to Mr. Reeves, was not employed in deeds of feoffment till the reign of Richard II. 1 *Reeves' Hist. Eng. Law*, 91.

Feoffare points even more plainly than *feodum*, to the primitive word *feoh* as its origin; *feoffare* (*Spelman's* mode of writing it) being scarcely distinguishable in sound from *feohare*, which may have been its first form as a verb.

FEOFFATOR. L. Lat. [from *feoffare*, q. v.] In old English law. A feoffor; one who gives or bestows a fee; one who makes a feoffment. *Bract.* fol. 12 b, 81. *Fleta*, lib. 3, c. 12, § 3.

FEOFFATUS, Feoffatus. L. Lat. [from *feoffare*, q. v.] In old English law. A feoffee; one to whom a fee is given, or a feoffment made. *Bract.* fol. 17 b, 44 b. *Fleta*, lib. 3, c. 12, § 3.

FEOFFMENT, *Feoffment*. L. Fr. and Eng. [L. Lat. *feoffamentum*, q. v.] The gift of a fee (*donatio feudi*.) A gift or conveyance in fee, of land, or other corporeal hereditaments, accompanied by livery of seisin, or actual delivery of possession. *Bract*. fol. 12 b. *Britt.* c. 34. *Co. Litt.* 9 a. 2 *Bl. Com.* 310, 311. 4 *Kent's Com.* 480, 481.—A conveyance of corporeal hereditaments by delivery of the possession upon, or within view of the hereditaments conveyed. *Butler's Co. Litt.* Note 231, lib. 3.

The deed, instrument or *charter*, (as it was formerly most commonly termed,) by which such a donation is expressed. 2 *Bl. Com.* 310. *Shep. Touch.* 203. 4 *Kent's Com.* 480. See *Feoffamentum*, *Charta*. For a form of this kind of deed in the original Latin, see 2 *Bl. Com.* Appendix, No. 1. And see *West's Symbolog.* part. 1, lib. 2, sect. 235, *et seq.* Anciently, a feoffment might be without deed, the donation with which the livery was accompanied being merely oral, but it was usually put into writing. 1 *Reeves' Hist. Eng. Law*, 90. *Poterit fieri donatio cum charta, vel sine charta*. *Bract*. fol. 11 b. By the statute of frauds, a written instrument was expressly required to convey the fee. 1 *Steph. Com.* 218. See *Stat.* 8 & 9 *Vict.* c. 106, § 3.

* * A feoffment originally meant the grant of a *feud* or *fee*, that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. This was the proper sense of the word; but by custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 *Reeves' Hist. Eng. Law*, 90, 91. *Mad. Form. Angl. Diss.* p. 4. *Butler's Note*, 231, lib. 3. *Co. Litt.* It was for ages the only method (in ordinary use,) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 *Steph. Com.* 467, 468. In American law, it is scarcely known. 2 *Hilliard's Real Prop.* 293, *et seq.*

Littleton uses *feoffment* in its present form, but Britton writes it *feffement*.

FEOFFEE. L. Fr. and Eng. [L. Fr. *sefe*; L. Lat. *feoffatus*.] The person to

whom a feoffment is made; the person enfeoffed. 2 *Bl. Com.* 310. *Litt.* sect. 1, 57. See *Feoffment*.

FEOFFEE TO USES. The person to whom a feoffment was made, upon the trust or confidence that he should hold the land to the use of some third person, or of the feoffor himself. *Cruise's Dig.* tit. xi. ch. 2.

FEOFFOR. L. Fr. and Eng. [L. Fr. *seffour*; L. Lat. *feoffator*.] The person making a feoffment, or enfeoffing another in fee. 2 *Bl. Com.* 310. *Litt.* sect. 1, 57. See *Feoffment*.

FEOH. Sax. A stipend; wages; reward; fee. This seems to have been the primitive word used in the vernacular of the Teutonic nations, to denote a feudal grant of lands; and from which were formed the French *fief*, L. Lat. *feodum* and *feudum*, Scotch *feu*, and English or Anglo-Norman *fee*. See *Fee*, *Feod*, *Feodum*.

FEONATIO. L. Lat. In forest law. The fawning season of deer. *Cart. de Forest.* c. 8. *Spelman*. See *Fenatio*.

FEOR. L. Fr. To make. *Kelham*.

FEORME, *Fearme*. Sax. [L. Lat. *firma*.] Food, provisions. *Spelman*, voc. *Firma*. An entertainment or feast. *Id.* *Herod gegeafwoode mycle feorme*; Herod made a great feast. *Sax. Evang. S. Marc.* vi. 21.

Rent paid in provisions. *Spelman*, *ub. sup.* *Cowell*, voc. *Ferme*. 2 *Bl. Com.* 318.

A manor. *Spelman*, *ub. sup.* Hence the L. Lat. *firma*, and English *ferm*, *farm*, (qq. v.)

FER, *Ferre*. L. Fr. [from Lat. *ferrum*.] Iron. *Hors de fers*; out of irons; not fettered. *Britt.* c. 5.

FERA. Lat. In the civil law. Wild. *Fera natura*; a wild nature. *Dig.* 41. 1. 5. 2, 5.

FERÆ NATURÆ. Lat. Of a wild nature. A term (derived from the civil law,) applied to animals considered as subjects of property, and denoting such as are naturally of a wild disposition, (as deer, foxes, hares, pigeons, wild geese, swans, bees and fish,) in contradistinction to those of a tame and domestic nature (*domitæ naturæ*.) *Inst.* 2. 1. 12—16. *Bract*. fol. 8 b, 9. 2 *Bl. Com.* 390, 391. 2 *Steph. Com.* 17, 68, 69. 2 *Kent's Com.* 348. 6 *Ad. & Ell.* (N. S.) 606. See *Domitæ naturæ*, *Qualified property*. Bracton distinguishes animals into three classes: wild animals, properly so called, (*feræ*;) wild animals which have been tamed, (*feræ*

facta mansueta;) and domestic animals, (*domestica*.) *Bract. ub. sup.*

FERCOSTA. Ital. A kind of small vessel or boat. Mentioned in old Scotch law, and called *fercost*. *Skene de Verb. Sign.*

FERDFARE. Sax. An acquittance from going into the army. *Fleta*, lib. 1, c. 47, § 22. See *Firdfare*.

FERDINGEL. Used in Domesday for *ferdindel*. See *Fardel*, *Fardingdeal*.

FERDINGMANUS. Skene calls this "ane Dutch word," and defines it "ane pennimaister or thesaurar," (treasurer.)

FERDWITE. *Ferdwyte*. Sax. An acquittance for murder in the army. *Fleta*, lib. 1, c. 47, § 15. See *Firdwite*.

FERE. *Ferre*, *Feor*. L. Fr. To make or do. *Kelham*. Old forms of *faire*, (q. v.)

FERGES. L. Fr. Irons; fetters. *Kelham*.

FERIA. Lat. [L. Fr. *ferie*.] In old English law. A week day, (*dies ferialis*;) as distinguished from Sunday. *Spelman*.

A holiday; a day exempt from judicial process. *Cowell*. 4 *Reeves' Hist. Eng. Law*, 17. See *Feria*.

A fair. *Bract*. fol. 56 b. *Fleta*, lib. 2, c. 63, § 4. *Spelman*. *Lib. Rames.* cited *ibid*.

FERIA. L. Lat. [from Sax. *fare*, passage, and *eie*, water.] In old English law. A ferry. *Spelman*. See *Ferry*.

FERIÆ. Lat. In the Roman law. Holidays. *Dig.* 2. 12. *Cod.* 3. 12. Not used in the singular.

FERIAL DAYS. [L. Lat. *dies feriales*, *feriæ*.] In old English law. Holidays. *Cowell*.

Working days, or week days, as distinguished from Sunday. *Stat.* 27 *Hen.* VI. c. 5.

FERITA. L. Lat. In old European law. A wound; a stroke. *Spelman*.

FERLINGATA. L. Lat. In old English law. A quarter of a yard-land. *Cowell*. See *Fardel*, *Fardingdeal*.

FERLING. [L. Fr. *ferlinge*, L. Lat. *ferlingus*; from Sax. *feorthling*.] In old English law. A fourth or quarter. The fourth part of a penny. *Spelman*. *Cowell*.

FERLINGUS. L. Lat. A furlong. *Co. Litt.* 5 b.

FERM. *Fearme*. [L. Fr. *ferme*, L. Lat. *firma*; from Sax. *feorme*, qq. v.] In old English law. A rent. *Spelman*, voc. *Firma*. 2 *Reeves' Hist. Eng. Law*, 402.

A lease or term for years. *Stat. Marl.* c. 24. 3 *Inst.* 145.

A house or land, or both, taken by lease. *Cowell*, voc. *Ferme*. See *Farm*, *Firma*.

FERME. L. Fr. [from Sax. *feorm*, q. v.] A rent; a farm; a lease on rent. *Si home lessa sa terre à ferme*; if a man let his land to farm. *Stat. Gloc.* c. 4. *Lessee à ferme*. *Artic. sup. Chart.* c. 14. *Britt.* c. 40. *Lessee à ferme—à trop hautes fermes*; let to farm at too high farms, (rents.) *Britt.* c. 21.

FERMER. L. Fr. [from *ferme*, q. v.] A lessee; a termor; one who held lands to farm; one who held a term in lands. *Britt.* c. 43, 64, 75. This word is used by Britton indifferently with *termor*, and in the same passage. *Id.* fol. 201 b.

FERMOR. [L. Fr. *fermer*; L. Lat. *firarius*, qq. v.] A lessee; one who held a ferm or term. Hence the modern *farmer*. Held to be not a good addition. *Yearbook T.* 28 *Hen.* VI. 4. "Fermor to the Queen." 3 *Leon.* 237. "Fermor of the Queen." 1 *Id.* 313. See *Farmer*, *Firarius*.

FERMORY. *Firmary*. [L. Lat. *firmaryum*.] In old records. A place in monasteries, where they received the poor, (*hospicio excipiebant*;) and gave them provisions, (*ferm, firma*.) *Spelman*. Hence the modern *infirmary*, used in the sense of a hospital. *Id.*

FERNIGO. L. Lat. In old English law. A waste ground, or place where fern grows. *Cowell*.

FERRAMENTUM. (pl. *FERRAMENTA*.) Lat. [from *ferrum*, iron.] In old records. The iron tools or instruments of a mill; iron work in general. *Lib. Nig. Heref.* *Blount*.

Horse-shoes. *Fleta*, lib. 2, c. 20.

FERRARE. L. Lat. [from *ferrum*, q. v.] In old English law. To shoe (a horse.) *Fleta*, lib. 2, c. 74, § 3.

Ferrator; a horse-shoer; a farrier. *Id.* lib. 2, c. 14, § 4.

FERREUR. L. Fr. A horse-shoer; a farrier. *Si un ferreur face covenant ove moy, à shooer mon chival bien & congeable*. *Yearb.* 14 *Hen.* VI. 58.

FERRE. Lat. In old practice. To bring. See *Tulit*, *Portare*.

FERRI. Lat. In the civil law. To be borne, that is, on or about the person. This was distinguished from *portari*, (to be carried,) which signified to be carried on an animal. *Dig.* 50. 16. 235.

FERRIFODINA. Lat. In old pleading. An iron mine. *Towns. Pl.* 273.

FERRILIMINATIO. L. Lat. 'The cementation or welding of iron. *Bract.* fol. 9 b. Probably a corruption of *ferruminatio*, (q. v.)

FERRUM. L. Lat. In old English law. A horse-shoe. *Fleta*, lib. 2, c. 12, § 3.

Ferrura; a shoeing. *Id.* lib. 2, c. 14, § 4.

FERRUMINATIO. Lat. In the civil law. A welding together. *Dig.* 6. 1. 23. 5. *Fleta*, lib. 3, c. 2, § 12.

FERRY. [L. Lat. *feria*, q. v.] A species of franchise, being a liberty or privilege, arising from grant or prescription, to have a boat or boats for carrying men and horses across a river for reasonable fare or toll. *Termes de la Ley.* Tomlins. 3 *Kent's Com.* 458, 421, note.

FESABLE. L. Fr. To be made. *Kelham.*

FESAUNT. L. Fr. [from *faire*, to do.] Doing. An emphatic word in old deeds. *Britt.* c. 39.

FESOUR. L. Fr. [from *faire*, to do.] A doer; an actor; the perpetrator of a crime. *Les principals fesours*; the principal actors. *Britt.* c. 5. *Fesours de teles noysaunce*; the makers of such nuisance. *Id.* c. 20.

Festinatio justitie est noverca infortunii. The hurrying [hasty administration] of justice is the stepmother of misfortune. *Hob.* 97. The word *festinatio* in this maxim is strangely translated, both in Branch's *Principia* and Wharton's *Lexicon*, *delay*.

FESTINGMAN. [Sax. *festenmon*.] In old English law. A surety or pledge; frankpledge. *Cowell.*

FESTING PENNY. [from Sax. *fastenian*, to fasten.] In English law. Earnest given to servants when hired, or retained in service. *Cowell.* *Blount.* Still in use in some parts of England, under the name of *fastening penny*; though a shilling is the amount actually paid. *Howitt's Rural Life of England*, p. 416, (Phil. ed. 1841.)

FESTINUM REMEDIUM. Lat. A speedy remedy. A term applied by the statute of Westminster 2, (13 Edw. I.) c. 24, to the writ of assise, as compared with the more dilatory remedies previously in use. 3 *Bl. Com.* 184. Lord Ellenborough, 15 *East*, 594.

FESTUM. Lat. A feast. *Tomlins.*

FET. L. Fr. Done; made. *Kelham.* An old form of *fait*.

Fact; a fact, deed, matter or business.

Issue en fet; issue in fact. *Yearb.* 3 *Edw.* II. 59. *E fet à remembrer*; and it is to be remembered. *Conf. Cartar.* 25 *Edw.* I.

Fetz, Feyetz, Fez. Deeds, actions, grants. *Kelham.*

FET ASSAVOIR, Fet Assaver. L. Fr. (Literally, a matter to be known or understood.) The title of a small French tract, published at the end of *Fleta*. 2 *Reeves' Hist. Eng. Law*, 281. *Selden's Diss. ad Flet.* c. 1, sect. 1. The expressions *fait assavoir*, *fait à savor* are common in the old books. *Britt.* cc. 4, 39.

FEU, Fieu, Fiew, Fewe. L. Fr. Fire; a fire-place, or hearth. *L. Fr. Dict.* *Kelham.*

FEU ET LIEU. Fr. In old French and Canadian law. Hearth and home. A term importing actual settlement upon land, by a tenant. *Dunkin's Address*, 15, 29, 85.

FEU, Few, Ffew. [L. Lat. *feudum*, q. v.] In Scotch law. A free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Scotch Dict.* Lands taken by purchase are called *feus of conquest*. *Ersk. Princ.* b. 3, tit. 8, a. 6. 1 *Reeves' Hist. Eng. Law*, 29, note.

The term *feu* has been used in Scotland, in contradistinction to ward-holding, (q. v.) the military tenure of that country, and means that holding where the vassal, in place of military services, makes a return in grain or in money. *Bell's Dict.* See *Feu-holding*.

Feu is derived either from the Fr. *fief*, by a slight change in the letters, or from the Lat. *feudum*, by abbreviation, or it may be directly from the primitive Sax. *feoh*, the sound of which it retains with very little variation. *To feu* is used as a verb in old statutes. *Stat. Jac.* VI. A. D. 1581.

FEU-ANNUALS. In Scotch law. The rent due under the tenure of feu-holding. *Scotch Dict.*

FEUAR. In Scotch law. The tenant of a feu; a feu-vassal. *Bell's Dict.*

FEUD, Feid. [L. Lat. *faida*, *feida*.] A combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Whishaw.* See *Faida*, *Deadly feud*.

FEUD. [L. Lat. *feudum*, *feodum*; Fr. *fief*, Scotch, *feu*.] A stipendiary estate in land, held of a superior, by service. 1 *Steph. Com.* 161.—A right which a vassal

had in land, or some other immovable thing of his lord's, to use the same and take the profits thereof hereditarily, rendering unto his lord such feudal duties and services as belonged to military tenure, the mere property of the soil always remaining unto the lord. *Spelman, Feuds & Tenures*, c. 1. See *Fee, Feod, Feud*.

* * This word is used by Blackstone and other writers, as the translation of the Lat. *feudum*, in preference to the proper English word *fee*, apparently with the view of more aptly distinguishing the original feudal grant or estate, from the *fee* of modern law. As the English word *feud*, however, has long had a peculiar meaning of its own, (*supra*), it would seem preferable to employ the Fr. *fief* as the translation of *feudum*, especially where reference is had to the feudal law of the continent. This is the term used by Dr. Robertson, in his History of Charles V. See *Fief, Feodum*.

FEUDAL. Relating or belonging to, or having the quality of a *feudum*, *fief*, or *fee*. That which is held of another by service; the opposite of *allodial*. See *Allodial*.

FEUDAL LAW. [Lat. *Lex Feudalis*; *Jus Feudorum*.] The law of feuds, or feudal estates. That peculiar system of law by which the creation, enjoyment and transmission of feudal estates were regulated, and the rights and duties growing out of the feudal relation of lord and vassal, defined and enforced. It originally consisted of unwritten customs and usages, which were first reduced to writing about the middle of the twelfth century, in the compilation known as the *Feudorum Libri*, or *Consuetudines*, commonly called the Books of Feuds or Fiefs. See *Feudorum Libri*. It was the law of nearly all Europe during the prevalence of the feudal system, and many of its principles, including the fundamental one of *tenure*, continue to be recognized at the present day. See *Craig Jus Feudale*, lib. 1, dieg. 4. *Sullivan on Feudal law*, lec. 3. 2 *Bl. Com.* 44, *et seq.* 3 *Kent's Com.* 489, *et seq.*

FEUDAL SYSTEM. The system of *feuds* or *fiefs*; that is, estates in land held of a superior by the tenure of service. A system of tenure, the origin of which is generally traced to the peculiar policy and usages of the northern nations who overthrown the Roman empire, and settled in its provinces; and which, from rude begin-

nings, grew up gradually into a vast body of institutions, which prevailed throughout Europe for many centuries, and has left important traces of its existence not only in that continent, but in America. The nature and history of this system have been so often discussed that it will be sufficient to refer to the leading authorities on the subject. 2 *Bl. Com.* 44, chap. iv. 1 *Steph. Com.* 160, *et seq.* 3 *Kent's Com.* 487, lect. liii. *Spelman*, voc. *Feodum*. 1 *Robertson's Charles V.* 10, 12, and Appendix, note viii. *Espit des Loix*, liv. 30. 1 *Hallam's Middle Ages*, 80, *et seq.* Mr. Spence's theory is, that the sources of the feudal system are to be found in the relation of *patron* and *client* in the Roman provinces, and in the distinction between *dominium directum* and *dominium utile* in the Roman law. 1 *Spence's Chancery*, 28, *et seq.*

FEUDATORY. See *Feudatory*.

FEUDO. Span. [from L. Lat. *feudum*.] In Spanish law. Feud or fee. *White's New Recop.* b. 2, tit. 2, c. 2.

FEUDORUM LIBRI (or **CONSUE- TUDINES**.) The Books (or customs) of Fiefs or Feuds. A compilation of feudal law, made about A. D. 1150, (or 1170, according to some,) at Milan, in Lombardy. It is the most ancient work on the subject, and was always regarded of the highest authority on the continent. 1 *Robertson's Charles V.* Appendix, Note xxv. 3 *Kent's Com.* 496, note. Mr. Reeves says no allusion is made to it in the old English law books. 2 *Reeves' Hist. Eng. Law*, 50. It is quoted, however, by *Spelman*, and, in more modern times, the most eminent writers, such as Sir William Blackstone, have referred to it freely. It is supposed to have been the work of two Milanese lawyers, (or *senators*, as they are termed by Montesquieu,) whose names are given by *Spelman* as Gerardus Niger, and Obertus de Orto. *Spelman*, voc. *Feodum*. Mr. Butler considers it to be a compilation from the writings of those authors and various customary laws prevailing in Italy, made, probably in the reign of Frederick the Second, by Hugolinus, a Bononian lawyer. *Hor. Jurid.* 93. Voet, in his *Digressio de Feudis*, sect. 2, says it is uncertain who were the authors. Dr. Robertson observes that it was formed plainly in imitation of the Roman code, the Pandects having been discovered only a few years previous. It is usually annexed to

the Corpus Juris Civilis, under the title of *Feudorum Libri*, or *Consuetudines Feudorum*. 3 *Ken's Com. ub. sup.* 1 *Mackeld. Civ. Law*, 94, Kaufmann's note.

FEUDUM. L. Lat. [from Sax. *feoh*, a stipend.] A fief, fee or feud, as it is sometimes translated. *Feudum est jus in prædio alieno in perpetuum utendi fruendi; quod pro beneficio dominus dat ea lege, ut qui accipit sibi fidem et militiæ munus aliudve servitium exhibeat*; a fief is a right of perpetual enjoyment in another's land, which the owner grants out of favor, upon condition that he who receives it shall render to him fealty, and military and other service. *Spelman*, voc. *Feodum*, citing *Cujarius ad Lib. Feud.* tit. 1. It is properly not the land itself, but a right in land; (*jus in prædio.*) *Id.*

Feudum antiquum; an ancient feud or fief; a fief descended to the vassal from his ancestors. 2 *Bl. Com.* 212, 221. A fief which ancestors had possessed for more than four generations. *Spelman*, voc. *Feodum*.

Feudum apertum; an open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone. 2 *Bl. Com.* 245.

Feudum francum; a free or frank fief or fee. *Spelman*.

Feudum improprium; an improper or derivative feud or fief. 2 *Bl. Com.* 58.

Feudum individuum; an indivisible or impartible feud or fief; descendible to the eldest son alone. 2 *Bl. Com.* 215.

Feudum ligium; a liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 *Bl. Com.* 367. *Spelman*.

Feudum maternum; a maternal fief; a fief descended to the feudatory from his mother. 2 *Bl. Com.* 212.

Feudum novum; a new feud or fief; a fief which began in the person of the feudatory, and did not come to him by succession. *Spelman*. 2 *Bl. Com.* 212. *Feudum novum ut antiquum*; a new fief held as an ancient one, or with all the qualities annexed to a fief descended from ancestors. 2 *Bl. Com.* 212. 1 *Steph. Com.* 384.

Feudum paternum; a paternal feud, or fief; a fief descendible only to the heirs by the father's side. 2 *Bl. Com.* 223.

Feudum proprium; a proper, genuine and original feud or fief; being of a purely military character and held by military service. 2 *Bl. Com.* 57, 58.

Feudum talliatum; a mutilated or truncated fief, or inheritance, from which the heirs general were cut off. *Craig Jus. Feud.* lib. 1, tit. 10, s. 24, 25. 2 *Bl. Com.* 112, note (m.) Hence the English *fee tail*, (q. v.)

* * * *Feudum* is the word generally used in the feudal law of the continent of Europe, to denote a feudal estate, as *feodum* is peculiar to the law of England. It does not, however, seem to have been applied to these estates until they had become hereditary, (when it was substituted in place of *beneficium*,) and hence the meaning of an estate of inheritance which has always been attached to it, and the words *feodum* and *fee* in English law. See *Fee*, *Feodum*, *Beneficium*. According to Muratori, it does not occur in any charter previous to the eleventh century. 1 *Murat. Antiq. Med. Ævi*, 594. Dr. Robertson observes that a charter of King Robert of France, A. D. 1008, was the earliest deed in which he had met with it. 1 *Rob. Charles V.* Appendix, Note viii. *Spelman*, (voc. *Feodum*,) remarks that it does not occur in the ancient laws of Lombardy. In the Books of Feuds, both terms *feudum* and *beneficium* are used indifferently. *Feud. Lib.* 2, tit. 1, 23, et passim.

FEU-HOLDING. In Scotch law. A holding or tenure of lands, where the tenant or vassal, in place of military services, makes a return in grain or in money. *Bell's Dict. voc. Feu, Holding*.

FEVEREZ. L. Fr. February. *Kelham*.

FEWE. L. Fr. Fire. *Per sudden fewe*; by a sudden fire. *Dyer*, 66 b, (Fr. ed.)

FEWER. L. Fr. To dig. *Fewa oee un hach en la terre*; dug with a hatchet in the ground. *Yearb. H.* 2 Edw. III 10.

FEY. L. Fr. Faith. *Kelham*.

A deed, (*fait*.) *Id.* *Feyets*; deeds, actions. *Id.*

FEYN. L. Fr. A fine. *Puys par prison et par feyn*; punished by imprisonment and by fine. *Britt.* c. 4.

FEYRE. L. Fr. A fair. *Britt.* c. 18.

FEZ. L. Fr. Fees. *Kelham*.

Actions; things done, (*faits*.) *Id.*

A son, (*fitz*.) *Id.*

Times, (*foitz*.) *Id.*

Ff, or *ff*. A character frequently used by old writers, (and by some modern ones, as Blackstone,) in quoting the Digests or Pandects of the civil law. Supposed, by the majority of jurists, to have originated

from the letter *D*, (for *Digesta*), by the addition of a stroke of abbreviation. The more probable supposition is, that it was merely a careless mode (as *π*) of writing the Greek letter *π* or *π*, the initial letter of *παιδαγωγοί*, which was used, especially by the Greeks, in quoting the Digest. *Calvin, Lex. Jur. voc. Digestorum*. 1 *Mackeld. Civ. Law*, § 65. See *Taylor's Civ. Law*, 24. Bracton uses a single *F*, in his quotations, thus: *F. locati*, *L. si merces*, *ff. culpæ nomine*. *Bract. fol. 114*. Mr. Long supposes this last character to be a double *f*; but it appears rather to be a double *s*, used in place of a *§*. *Long's Discourses*, 107.

FIANCER. *L. Fr.* To pledge one's faith. *Kelham*.

FIANZA. *Span.* In Spanish law. Suretyship. *Schmidt's Civ. Law*, 173.

FIAR. In Scotch law. He that has the fee or *feu*. The proprietor is termed *fiar*, in contradistinction to the life renter. 1 *Kames' Equity*, Pref. 5 *Bell's Appeal Cases*, 280.

FIAT. *L. Lat.* (Let it be done.) In English practice. A short order or warrant of a judge, commanding or authorizing something to be done; as the entry of a rule or order, the issuing of process, and the like. 1 *Tidd's Pract.* 100, 108. 2 *Id.* 1091.

Fiat justitia, (let justice be done,) were words formerly written by the king at the top of a petition for a warrant to bring a writ of error in parliament, signifying his assent. *Jacob. Dyer*, 375. *Staundf. Prærog. Reg.* 22.

Fiat prout fieri consuevit; (*nil temere novandum*.) Let it be done as it hath used to be done; (nothing must be rashly innovated.) *Jenk. Cent.* 116, case 39. *Branch's Pr.*

FIAT IN BANKRUPTCY. One of the proceedings in the English bankrupt practice, being a power, signed by the Lord Chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 *Steph. Com.* 199. By the statute 12 & 13 *Vict. c. 116*, fiats were abolished.

FICTIO. *Lat.* [from *fingere*, to feign.] A fiction. *Fictio juris* or *legis*; a fiction of law. See *Fiction of law*.

FICTIO OF LAW. [*Lat. fictio juris; fictio legis*.] A legal assumption that a thing is true, which is either not true, or which is as probably false as true. *Broom's*

Max. 54, [90.] *Bell's Dict.* Called by Finch, "a feigned construction." *Law*, b. 1, ch. 5.—An assumption of a possible thing as a fact, which is not true, for the advancement of justice, and which the law will not allow to be disproved. (*Fictio juris est legis, adversus veritatem, in re possibili, ex justa causa dispositio, adversus quam probare non licet*.) 2 *Rol. R.* 502. *Westenberg, Princ. Jur.* lib. 22, tit. 3, n. 28. *Gothofred*, in *Dig.* lib. 22, tit. 3, fol. 322. *Best on Presumptions*, 24, § 20, and note. The matter assumed should always be for the furtherance of justice, (*ex justa causa*.) Hence the maxim, *In fictione juris semper subsistit æquitas*. 3 *Bl. Com.* 43, 283. *Co. Litt.* 150 a. *Fictio legis neminem lædit—nemini operatur damnum vel injuriam*. A fiction of law injures no man; works loss or injury to no one. 2 *Rol. R.* 502. *Palm.* 354. No fiction shall extend to work an injury. 3 *Bl. Com.* 43. *Woodworth, J.* 17 *Johns. R.* 348. *Fictio legis inique operatur alieni damnum vel injuriam*. 3 *Co.* 36. The matter assumed should also be physically possible, (*in re possibili*.) 2 *Rol. R. ub. sup.* *Huber. Prælect. J. C.* lib. 22, tit. 3, n. 22.

* * Mr. Best distinguishes legal fictions from presumptions *juris et de jure*, and divides them into three kinds: affirmative or positive fictions, negative fictions, and fictions by relation. *Best on Presumptions*, 27, § 24.

Affirmative or positive fictions are those which assume something to exist, which in reality does not; such as the fiction of lease, entry and ouster in the action of ejectment, and the *ac etiam* clause in a writ of *capias*. *Id. ibid.* To these may be added the ancient common recoveries and the modern feigned issues. In *negative* fictions, that which really exists is treated as if it did not. *Id. ibid.*

Fictions by relation are of four kinds: First, where the act of one person is taken to be the act of another; as where the act or possession of a servant is deemed the act or possession of the master. Second, where an act done by or to a thing, is taken, by relation, as done by or to another; as where a mortgage of land is created by delivery of the title deeds, or an acceptance of a portion of goods sold is taken as equivalent to a taking possession of the whole. Third, fictions as to place; as where a contract made abroad is treated as if made in London, or other place where

it is intended to enforce it. 3 *Bl. Com.* 107. To this head belongs the *postliminium* of the Roman law. *Inst.* 1. 12. 5. See *Postliminium*. Fourth, fictions as to time, such as the principle that the title of an executor or administrator to the goods of the testator, or intestate, relates back to the time of his death; the general principle that every ratification has relation back to the time of the act done; and the practice of allowing various acts in a suit to be done *nunc pro tunc*.* *Best on Presumptions*, 27, 28. See *Ratihabitio, Nunc pro tunc*.

FIDEI-COMMISSARIUS. Lat. [from *fidei-commissum*, q. v.] In the civil law. A person who had a beneficial interest in an estate which, for a time, was committed to the faith or trust of another. *Harris' Justin.* *Inst.* quoted by Cooper, *ub. infra.* *Hallifax, Anal.* b. 2, c. 8. This word answers very nearly to the *cestuy que trust* of the English law, but Dr. Cooper prefers Anglicizing it *fidei-commissary*, which is also the form adopted by Dr. Brown. *Cooper's Justin. Notes*, *536. 1 *Brown's Civ. Law*, 190, note. Mr. Justice Story prefers *fide-commissary*. 1 *Story's Eq. Jur.* § 321, note.

FIDEI-COMMISSUM. Lat. (pl. *fidei commissa*.) In the civil law. A thing committed to one's faith. A trust, or bequest in trust; the disposal by will of an inheritance to a person, in confidence that he would convey it, or dispose of the profits, at the will of another, or, in the words of the Institutes, that he would restore (*reddat, restituat*) it to another. *Inst.* 2. 23. 2. *Hallifax, Anal.* b. 2, c. 8. 2 *Bl. Com.* 327. 1 *Steph. Com.* 329. The person in whom the trust was reposed was called *hæres*, or *hæres fiduciarius*, the person intended to be benefited, *fidei-commissarius*. *Inst.* 2. 23. The trust itself was called *fidei-commissum*, because the performance of it anciently depended entirely upon the faith or honor of the trustee. *Ideo fidei-commissa appellata sunt, quia nullo vinculo juris, sed tantum pudore eorum qui rogabantur, continebantur;—à fide hæredum pendebant.* *Inst.* 2. 23. 1, 12. Heineccius calls the testator *fidei-committens*. *Elem. Jur. Civ. lib.* 2, tit. 23. For a full view of the nature of a *fidei-commissum* under the Roman law, and the code of Louisiana, see the opinion of Mr. Justice Campbell, in *Executors of McDonogh v. Murdoch*, 15 *Howard's R.* 407—410.

* * The right of the *fidei-commissarius* was originally considered as *jus precarium*, one for which the remedy was only by entreaty or request, but was afterwards made *jus fiduciarium*, a confidence, the observance of which might be enforced; and it was made the business of a particular magistrate (the *prætor fidei-commissarius*.) to enforce the observance of them. *Inst.* 2. 23. 1. 1 *Steph. Com.* 329. 4 *Kent's Com.* 289. The terms, however, by which the *fidei-commissum* was created, continued to preserve their ancient character of a request:—*peto*, (I request;) *rogo*, (I ask;) *volo*, (I wish;) *mando, fidei tue committo*, (I commit to your faith.) *Inst.* 2. 24. 3. *Cod.* 6. 43. 2. The Institutes give the form of words which might be employed for this purpose. *Lucius Titius hæres meus esto*; let Lucius Titius be my heir. This was the appointment of the heir, or trustee. Then followed the trust: *Rogo te, Luci Titi, ut cum primum poteris hereditatem meam adire, eam Caio Scio reddas, restituas*; I request you, Lucius Titius, that as soon as you shall enter on my inheritance, you restore it to Caius Scius. *Inst.* 2. 23. 2. 4 *Kent's Com.* 289, 290. See 1 *Spence's Chancery*, 435—438. The expressions *cupio des, opto des, desidero uti des*, (I desire you would give,) *credo te daturum*, (I trust you will give,) amounted to a *fidei-commissum*. *Dig.* 30. 115, 118.

FIDE-JUBERE. Lat. In the civil law. To order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo*; Do you pledge yourself? I do pledge myself. *Inst.* 3. 16. 1. One of the forms of stipulation. The form in Greek was, τὴ ἐμὴ πίστιν ἀσχεῖν, λέγειν. *Inst.* 3. 21. 7. Sometimes σέσω, σωλάσαι, φησὶ. *Dig.* 46. 1. 8, pr.

FIDE-JUSSIO. Lat. In the civil law. A contract in which a person bound himself, as a surety or accessory, for another, by the way of stipulation, without discharging the obligation of the principal. *Hallifax, Anal.* b. 2, c. 16, num. 10. Called *fide-jussion*. *Id. ibid.*

FIDE-JUSSOR. Lat. [from *fide-jubere*, q. v.] In the civil law. A surety for another; a guarantor; one who binds himself for another who makes a promise, (*pro eo qui promittit obligatus*.) *Inst.* 3. 21, pr. One who binds himself in the same contract conjointly with the debtor, for the greater security of the creditor. *Cooper's notes, in loc.*

A bondsman or bail for a party in an action. *Fleta*, lib. 2, c. 60, § 11. Fidejussors were sureties in the nature of special bail, whose undertaking was *judicatum solvi*, that the amount adjudged to the plaintiff should be paid to him. *Inst.* 4. 11, pr. *Dig.* 2. 8. 3 *Bl. Com.* 291. This, however, was only where a defendant appeared by attorney; for if he defended in his own person, the only security he was compelled to give was that he would remain *in judicio* (in court, or within the power of the court,) until the end of the suit. *Inst.* 4. 11. 2.

The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated fidejussors. 3 *Bl. Com.* 108. *Clarke's Prae. Cur. Adm.* tit. 11, 13.

FIDELIS. Lat. [pl. *fideles*; from *fides*, faith; L. Fr. *feal*, *foiall*.] In old European law. Faithful; trusty. *Fideles in Christo*; the faithful in Christ, or Christians. *Spelman*, voc. *Fideles*. Old instruments frequently commence with the words, *Omnibus in Christo fidelibus*; to all the faithful in Christ: *Omnibus Christi fidelibus*; to all the faithful of Christ. See *West's Symboleog.* part 1, b. 2, sect. 528, 529. *Fideles regis*; the subjects of a king or prince. Hence writs, commissions, &c., were formerly addressed by the sovereign in England, *dilecto et fideli suo, dilectis et fidelibus suis*; to his beloved and faithful. *Reg. Orig. passim*.

A feudal tenant, or vassal, as bound to be faithful, or to bear faith (*fidem ferre*.) to his lord. *Spelman*. *Feud. Lib.* 1, tit. 4, pr. Applied originally to the *comites*, the attached or devoted followers of the chiefs among the ancient Germans. 1 *Robertson's Charles V.* Appendix, Note viii.

FIDELITAS. L. Lat. [from *fidelis*, q. v.] In feudal and old English law. Fealty; fidelity. *Spelman*, voc. *Fidelis*. *Fleta*, lib. 3, ch. 16, § 21. *Feud. Lib.* 2, tit. 3, 4, 5. 1 *Bl. Com.* 367. See *Fealty*. Used in the plural, *fidelitates*. *Reg. Orig.* 317 b. Called in French feudal law, the essence of a fief. *Guyot, Inst.* ch. 2; citing *Dumoulin*, tit. des Fiefs, n. 115.

FIDES. Lat. [Fr. *foi*, *foy*.] Faith; fidelity; allegiance. *Fidem ferre, portare*; to bear faith. Words in the old oaths of fealty. *Spelman*. *Ad fidem utriusque regis*; owing allegiance to each king. *Bract.* fol. 427 b.

Trust; confidence; honesty, sincerity, or uprightness of dealing. *Bona fides*; good faith. See *Bona fides*. *Uberrima fides*; the most abundant faith; the utmost degree of good faith. 2 *Kent's Com.* 483, note. *Fides servanda est*. Faith must be observed. *Id.* 485. An agent must not violate the confidence reposed in him. *Story on Agency*, § 192.

Belief; veracity; credibility (of a witness.) *Dig.* 22. 4. 2, 3. *Fleta*, lib. 2, c. 60, § 25.

Faith; honor; pledged or plighted word or troth. *Fides data*; faith given; troth plighted. *Legum servanda fides*; the faith of laws must be observed. *Cowell*, voc. *Devise*.

Fides servanda est; *simplicitas juris gentium praevalent*. Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. Lord Mansfield, 3 *Burr.* 1672. *Story on Bills*, § 15.

FIDUCIARY. [from Lat. *fiducia*, confidence.] Relating to, founded upon, or having the quality of a trust or confidence.

Founded upon a special or technical trust, as distinguished from an implied trust.* *McLean, J.* 2 *Howard's R.* 202, 208.

FIE. L. Fr. Fee; a fee. *Kelham*. An old form of fee.

Faith. *Id.* Another form of *foy*.

FIEF. Fr. [from Sax. *feoh*; L. Lat. *feudum*.] In feudal law. An estate in land held of a superior by service. The same with the English *fee*, and Scotch *feu*. See *Feudum*, *Fee*.—An estate in land, held under the charge of fealty, homage, and military service. *Pothier, Traité des Fiefs*, part 1, c. prelim. sec. 1. 3. See *Esprit des Lois*, lib. 30, c. 16, 17, *et passim*. *Guyot, Inst. Feodal.* ch. 1. *Fief* rarely occurs in old English law, though it is found in the *Mirror*, together with the derivative *fief-tenant*, (q. v.) *Mirr.* c. 1, § 16, 17.

* * *Fieu* and *fiew*, (qq. v.) occur in the books as old forms of this word; and it is perhaps not assuming too much to suppose that the final *f* in *fief* was originally an *u*; the convertibility of *u* into *f*, being apparent in other instances. See *Farley, Lieutenant*. This supposition is aided by the fact that the French term for an allodial estate is a word also ending in *eu*; *aleu*. See *Alleu*. It shows, moreover at once, the derivation from the primitive Saxon *feoh*: *fieu* being the same sound in other

letters. The great antiquity and expressiveness of this French term have led to its introduction into modern English law, and it is accordingly freely used by the best English writers to denote a feudal grant or estate. 2 *Bl. Com.* 45. 1 *Steph. Com.* 218. 3 *Kent's Com.* 494, 496.

FIEF D'HAUBERT. Fr. [L. Lat. *feudum hauberticum*.] In Norman feudal law. A fief or fee held by the tenure of knight-service; a knight's fee. 2 *Bl. Com.* 62. *Mirr.* c. 2, § 27. *Spelman*, voc. *Feodum*. See *Haubert*. So called, according to Skene, because given upon condition that the vassal, possessor thereof, shall come to the host and army with jack and arms, or with a haubert, haubergeon or coat of mail. *Skene de Verb. Signif.* voc. *Haubert*.

FIEF-TENANT. L. Fr. In old English law. The holder of a fief or fee; a fee-holder or freholder. *Touts les fief tenants dans le hundred sont obliges de venir, per le servage de leur fiefs*; all the free-holders in the hundred are bound to come, by the service of their fees. *Mirr.* c. 1, § 16.

FIEL. Span. In Spanish law. A sequestrator; a person in whose hands a thing in dispute is judicially deposited; a receiver. *Las Partidas*, part. 3, tit. 9, l. 1.

"**FIELD.**" [L. *ager*, *campus*, qq. v.] Not a usual term of description in legal proceedings. 1 *Chitt. Gen. Pr.* 160.

FIELDAD. Span. In Spanish law. Judicial deposit; sequestration. *Las Partidas*, part. 3, tit. 9, l. 1.

FIERDING COURTS. Ancient Gothic courts of an inferior jurisdiction, so called because four were instituted within every inferior district or hundred. 3 *Bl. Com.* 34. *Stiernhook*, *de Jur. Goth.* lib. 1, c. 2, cited *ibid.*

FIERGES. L. Fr. Fetters; irons. *Kelham*.

FIERI. Lat. To be made; to be done. See *In fieri*.

Fieri non debet, (debut,) sed factum valet. It ought not to be done, but [if] done, it is valid. *Shep. Touch.* 6. 5 Co. 39. *T. Raym.* 58. 1 *Stra.* 520. A maxim frequently applied in practice. *Platt*, J. 19 *Johns. R.* 84, 92.

FIERI FACIAS. L. Lat. (You cause to be made.) In practice. A writ of execution, (usually termed for brevity, *fi. fa.*;) commanding the officer to whom it is directed that he cause to be made of the party's goods and chattels or real estate,

(that is, to obtain by a levy and sale of them,) the amount specified in the writ, and that he have it in court on the return day. 3 *Bl. Com.* 417. 3 *Steph. Com.* 649. 2 *Tidd's Pract.* 993, 998.

* * * The name of this important writ is derived from its two emphatic words, as distinguished in the form given *infra*. Co. *Litt.* 290 b. 3 *Bl. Com.* 417. It is supposed by Mr. Reeves to have obtained both its name and existence from the words of the statute of Westminster 2, chap. 18: *quod vicecomes fieri faciat de terris et catallis*. 2 *Reeves' Hist. Eng. Law*, 187. The general opinion, however, has been that it was a common law execution. *Id. ibid.* note. 2 *Tidd's Pr.* 998. In modern English practice, the *fi. fa.* issues against goods and chattels only, and it seems to be supposed in the books that the ancient writ was restricted in the same way. See *Fleta*, lib. 2, c. 62, § 8. But the forms in the Register are all *de terris et catallis*, thus: *Rex vic. salutem: Præcipimus tibi quod de terris et catallis T. de S. in balliva tua, FIERI FACIAS decem libras, et illas habes coram justitiariis nostris apud W. in octavis Sancti Hilarii, ad reddendum T. de B. quæ ei in eadem curia nostra adjudicatæ fuerunt, pro damnis ipsius quæ habuit occasione cujusdam transgressionis, &c. Et habeas ibi tunc hoc breve. Teste, &c. Reg. Jud.* 18 b. See *Bract.* fol. 312 b. In American practice, the *fi. fa.* is usually directed to be executed in the first instance against the goods and chattels of the party named, and failing those, against his real estate.

FIERI FECL. L. Lat. (I have caused to be made.) In practice. The name given to the return made by a sheriff or other officer to a writ of *fieri facias*, where he has collected the whole, or a part of the sum directed to be levied. 2 *Tidd's Pr.* 1018. The return, as actually made, is expressed by the word "satisfied" endorsed on the writ.

FIEU. L. Fr. A fee, or fief. *Fieu de chevalier*; a knight's fee. *Kelham*.

FIEW. L. Fr. A fee or fief. *Fiew tenants*; fee tenants, or free tenants. *Kelham*. The same with *fief-tenants*, (q. v.)

FIEZ. L. Fr. Times. *Ascun fies*; sometimes. *Fet Assaver*, §§ 53, 59. *Une fies*; once. *Id.* § 37. See *Fois*.

FIFTEENTHS. [L. Lat. *decimæ quintæ*; Fr. *quinzième*.] In English law. A species of tax upon personal property.

formerly imposed upon cities, townships and boroughs in England, that is, not upon the citizens individually, but upon the whole city, town, &c.; and so called, because amounting to a *fifteenth* part of what each city or town was valued at, or a fifteenth of every man's personal property, according to a reasonable valuation. 2 *Inst.* 77. 1 *Bl. Com.* 308, 309. *Camd. Brit.* 168, 171. *Cowell. Tomlins.*

FIGHTWITE. Sax. In old English law. A mulct or fine imposed on a person for making a fight or quarrel, (*mulcta ob commissam pugnam*), to the disturbance of the peace. *Spelman. Cowell.*

FIL. *File.* L. Fr. A thread; a line. *Jesques au fil del ewe*; as far as the line of the water. *Britt.* c. 42, fol. 111 b. This corresponds with the Fr. *jusqu'à fil de l'eau*. *Guyot, Inst. Feod.* c. 23. *Jesques au fil de myleu del ewe*; as far as the middle line or thread of the water. *Britt.* fol. 110.

FILACE. L. Fr. A file. *En filace*; on file. *Kelham.* *Philas* occurs in Britton. *Remue de philas*; removed from the file. *Britt.* c. 48.

FILACER, Filazer, Filizer. [L. Lat. *filizarius, filazarius*; from Fr. *file, filace*, (L. Lat. *filum*), a thread.] An officer of the Court of Common Pleas in England, so called, because he *filed* the writs whereon he made out process. *Cowell.* There were fourteen of these officers, whose duty was to make out all original writs, and process thereon, to enter the appearance of defendants, special bails, imparlances, &c. *Termes de la Ley.* 1 *Arch. Pr.* 11, *et passim.* This office was abolished by statutes 7 Will. IV. and 1 Vict. c. 30. *Holthouse.*

FILACIUM. L. Lat. [from Fr. *filace*.] A file. *Spelman.* See *File*.

FILARÉ. L. Lat. In old English practice. To file. *Towns. Pl.* 67.

FILCTALE. In old English law. A word used by Bracton to denote a kind of compotation or entertainment, given by bailiffs of hundreds, for the purpose of extorting money from those who attended them; (*ut pecunias extorqueant ab eis qui sequuntur hundreda sua et ballivas suas*.) *Bract.* fol. 117 b. See *Fleta*, lib. 1, c. 20, § 102. *Spelman* considers the proper reading of this word to be *fildale*, an ale, or drinking in a *field*.

FILE. L. Fr. [from Lat. *filia*.] A daughter. *Litt.* sect. 7, 8.

Fielle, fillie and *filie* are given by *Kelham* as other forms of this word.

FILE. [L. Lat. *filum, filacium*.] In practice. A thread, string or wire, upon which writs and other exhibits in courts and offices, were formerly fastened, or *filed* for the more safe keeping of them together. *Cowell. Spelman*, voc. *Filacium*.

The paper itself, or a number of papers so filed. *Tomlins.* A *file* is a record of the court. 1 *Lill.* 112.

The papers filed appear to have been originally *pierced through* with (*trajecta*), and *strung upon* the thread or wire employed, as is still sometimes done in offices. *Spelman.* They are now usually arranged in bundles, a thread or string being used on the *outside* to fasten them together. In modern practice, a *file* is a bundle of papers, each paper being similarly folded and endorsed, and tied together. The phraseology of the old practice, however, is still retained in the common expressions "to put on file," "to take off the files." See *To file, Filum*.

FILE. L. Fr. [L. Lat. *filum*.] A thread, line or mark. *Haut file de mer*; the high line of the sea; high-water mark. *Rot. Parl.* 11 Hen. IV. m. 61. See *Fil, Filum aquæ*.

To **FILE.** [L. Lat. *filare*.] In practice. To put upon the *files*, or deposit among the records of a court. *Afile* (q. v.) is used in the old books. See *File*.

Filing a bill in equity is an equivalent expression to *commencing a suit*. 7 *Metcalf's R.* 157.

* * The *filing* of a paper is considered as an exhibition of it to the court, and the clerk's office in which it is filed represents the court for that purpose. The *filing* of papers forms an important part of the proceedings in an action, and is of constant occurrence in practice. It is effected by delivering the paper, (endorsed with the title of the cause and the attorney's name,) to the clerk of the court in which the action is pending, who marks it "*filed*," adding the date, and deposits it under the proper head, among the papers or files in his office.

"To file" a paper, on the part of a party, is to place it in the official custody of the clerk. "To file," on the part of the clerk, is to endorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. *Wheeler, J.* 14 *Texas R.* 339.

FILEINJAID. Brit. A name given to villeins in the laws of Hoel Dda. *Baringt. Obs. Stat.* 302.

FILIATE. [from Lat. *filius*, a child.] To fix a bastard child on some one, as its father. 2 W. Bl. 1017. To declare whose child it is. *Id.*

FILIATION. [L. Lat. *filatio*, from *filius*, a child.] The fact which creates the relation of parent and child. *Hubback's Evid. of Success.* 235.

The adjudging of a bastard to be the child of a certain man.* The fixing of a bastard child on some one as its father. *Webster.* See *Affiliation*.

FILICETUM. Lat. [from *filix*, fern.] In old English law. A ferny or brackly ground; a place where fern grows. *Co. Litt.* 4 b. *Shep. Touch.* 95.

FILIOLUS. Lat. In old records. A god-son. *Spelman.*

FILIUS. Lat. In civil and old English law. A son; a child. *Filium cum definimus, qui ex viro et uxore ejus nascitur*; we define him to be a son, who is born of a man and his wife. *Dig.* 1. 6. 6. *Præsumitur quis esse filius, eo quod nascitur ex uxore*; one is presumed to be another's child, because he is born of his wife. *Bract.* fol. 6, 88. *Filius est nomen nature, sed hæres nomen juris.* Son is a name of nature, but heir is a name [term] of law. 1 *Sid.* 193. 1 *Powell on Devises*, 311. An alien may have a son, but no alien can have an heir. *Id. ibid.* See *Hæres*.

A distinction was sometimes made in the civil law, between *fili* and *liberi*; the latter word including grandchildren, (*neptotes*), the former not. *Inst.* 1. 14. 5. But according to Paulus and Julianus, they were of equally extensive import. *Dig.* 50. 16. 84. *Id.* 50. 16. 201.

FILIUS-FAMILIAS. Lat. In the civil law. The son of a family; an unemancipated son; one in *aliena potestate*. *Dig.* 1. 6. 4. *Id.* 50. 17. 93. *Inst.* 2. 12, pr. *Id.* 4. 5. 2. *Story's Conflict of Laws*, § 61.

FILIUS MULIERATUS. L. Lat. In old English law. The eldest legitimate son of a woman, who previously had an illegitimate son by his father. *Glanv.* lib. 7, c. 1. Otherwise called *mulier*. 2 *Bl. Com.* 248. See *Mulier*.

FILIUS NULLIUS. Lat. The son or child of nobody. *Filius populi*; a child of the people. Terms applied to a bastard. 1 *Bl. Com.* 459. 6 *Co.* 65 a. *Fortescue de L. L. Angliæ*, c. 40. *Burr. Sett. Cas.* 189.

FILS. Fr. Sons. Defined by the Civil Code of Louisiana to include daugh-

ters. *Le mot fils comprend les filles.* Art. 3522, num. 1.

FILUM. Lat. [L. Fr. *fil*, *file*, qq. v.] In old practice. A thread, string or wire used for passing through and connecting papers together; a file. Otherwise called *filacium*, (Fr. *filace*, qq. v.) *Spelman*, voc. *Filacium*. See *File*.

A thread or line, passing through a stream or road. See *Filum aquæ*, *Filum viæ*. The English word *thread* has in ordinary speech this sense of running through; as in the expressions "thread of a discourse or argument;" "to thread one's way," &c.

A line or mark, as the edge or border of a thing. *Filum forestæ*; the edge of the forest. *Manwood*, 371. 1 *Crabb's Real Prop.* 485. "To the very last filum of the plaintiff's land." 5 *Traut.* 133, arg. "Up to the extreme filum of the plaintiff's property." *Id.* 134, arg.

FILUM AQUÆ. L. Lat. [L. Fr. *fil del ewe*.] A thread or line of water; a water line or mark; the outer line or edge of a stream; the water's edge. *Altum filum*; the high line. *Rot. Pat.* 4 *Hen. VI.* m. 11, par. 2. *Haut file de mer*; the high line of the sea; high-water mark. *Rot. Parl.* 11 *Hen. IV.* m. 61. *Blount*.

A stream, or course of water. *Cowell* *Blount*.

A thread of water, as running through a stream; a middle thread; a central line.* 24 *Pick. R.* 344. Usually called "the thread of the stream." Shaw, C. J. 3 *Cushing's R.* 207. 4 *Wisconsin R.* 486, 508.—An imaginary line drawn through the middle of a stream, and supposed to divide it into two equal parts; constituting, in certain cases, the boundary between the riparian proprietors on each side, and between counties, townships, &c.* *Schulze on Aquatic Rights*, 88. *Blount.* *Item si tantum ex altera parte prædia possideat, prope ripam, tenementum suum erit usque ad filum aquæ*; also if he own the lands only upon one side [of the stream,] near [on] the bank, it will be his freehold as far as the thread of the water. *Bract.* fol. 208 b. *Item refert utrum aqua, in qua id factum est quod nocet, propria sit ejus de quo queritur, vel communis, vel in parte propria, scilicet usque ad filum aquæ, et partem aliena*; it is also a material consideration, whether the water in which the nuisance is made, be the property of the party complained of, or common, or in part his own, that is, as far as the thread of the stream.

and partly another's. *Id.* fol. 235. Fleta calls it *filum in medio aquæ*; the thread in the middle of the stream. Fleta, lib. 4, c. 1, § 21. Lord Hale translates *filum aquæ*, middle of the stream. *Hale de Jur. Mar.* pars 1, c. 4.

* * The phrase *filum aquæ* is constantly used in modern law, indifferently with *medium filum aquæ*, (as part of the phrases, *usque filum aquæ*, *ad filum aquæ*, *ad medium filum aquæ*,) to signify the same thing. 17 *Johns. R.* 195. 20 *Id.* 90, 99. 6 *Cowen's R.* 518. *Id.* 543—550. 5 *Wendell's R.* 423. 13 *Id.* 355. 20 *Id.* 149. 24 *Id.* 451. 26 *Id.* 404. 4 *Hill's (N. Y.) R.* 369. 2 *N. Hamp. R.* 369. 3 *Greenleaf's R.* 474. 3 *Kent's Com.* 428—431, and notes. 2 *Smith's Lead. Cas.* 98, (Am. ed. note.) But that *filum*, in itself, properly imports an *outer* line, an edge, verge or border, and not a central line, is clear from repeated instances of its use in the old books. Thus, it is expressly applied to the sea, in the phrase *altum filum*, (L. Fr. *haut file de mer*,) to denote high-water mark. See the first definition, *supra*. In the same sense it is applied to a forest. Thus, "if a dog fastens upon a deer before she gains *filum forestæ*, (the edge or verge of the forest,) and she drags the dog *into the forest*, and is there killed, the owner may pursue and take the deer out of the forest." *Manwood's Forest Law*, 371. See *Filum*. Bracton, indeed, (who is followed by Lord Hale,) uses *filum* to denote a *central* line, and it is probably through this author that this sense of the word has become so firmly established in modern law. See the quotations *supra*. In Britton both phrases, *fil del ewe*, and *fil de myleu del ewe*, are used in the chapter *De Dissisine*, but are not apparently distinguished. *Britt.* c. 42. Strictly, the central line of a stream should be designated as *medium filum aquæ*, or, in English, the "*middle thread*," which is the phrase employed by Lord Mansfield and other high authorities. 4 *Burr.* 2162. 3 *Sumner's R.* 170.

FILUM VIÆ. L. Lat. The thread or middle line of a road, or street. An imaginary line drawn through the middle of a road, and constituting the boundary between the owners of the land on each side. 2 *Smith's Lead. Cas.* 98, (Am. ed. note.)

FIN. Fr. [from Lat. *finis*, an end.] An end, or limit; a limitation, or period of limitation. *Fin de non-recevoir*; a legal

bar to the maintenance of a claim. *Ord. Mar.* liv. 1, tit. 12. *Poth. Oblig.* part 3, ch. 8, art. 1.

FINAL. [L. Lat. *finalis*, from *finis*, an end.] Ending; making an end; that which terminates or ends a matter or proceeding, not absolutely, however; as the final judgment of an inferior court, which admits of an appeal. See *Final judgment*, *Final sentence*.

Absolutely ending or concluding a matter; conclusive; as the final judgment of a court, which admits of no appeal. See *Final judgment*.

FINAL DECREE. In equity practice. A decree which finally decides and disposes of the whole merits of a cause; reserving no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its further decision.* 7 *Paige's R.* 18. 2 *Daniell's Chanc. Pr.* (Perkins' ed.) 1199, note (1.) See 4 *Comstock's R.* 415.

A decree which terminates all litigation on the same right. 1 *Kent's Com.* 316.

FINAL JUDGMENT. In practice. A judgment which puts an *end* to an action at law, by declaring that the plaintiff either has, or has not entitled himself to recover the remedy he sues for. 3 *Bl. Com.* 398. So distinguished from *interlocutory* judgments, which merely establish the right of the plaintiff to recover, in general terms. *Id.* 397. A judgment which determines a particular cause. See 1 *Kent's Com.* 316.

A judgment which cannot be appealed from; which is perfectly conclusive upon the matter adjudicated. Morton, J. 24 *Pick. R.* 300. A judgment which terminates all litigation on the same right. The term "final judgment," in the judiciary act of 1789, sec. 25, includes both species of judgments as just defined. 2 *Peters' R.* 494. 1 *Kent's Com.* 316. 6 *Howard's R.* 201, 209.

A judgment is final and conclusive between the parties, when rendered on a verdict on the merits, not only as to the facts actually litigated and decided, but also as to all facts necessarily involved in the issue. 26 *Alabama R.* 504.

FINAL PROCESS. In practice. Writs of execution in an action at law. So termed as concluding the proceedings, in contradistinction to *mesne process*, (q. v.)

FINAL SENTENCE. Distinguished from a definitive sentence. Marshall, C. J.

1 *Cranch's R.* 103. The last decree of an inferior court is *final* in relation to the power of that court, but not in relation to the property itself, [which is the subject of litigation,] unless it be acquiesced under. *Id. ibid.*

FINALIS. Lat. [from *finis*, an end or limit.] In old English law. Ending; making an *end* or termination; final. *Finalis concordia*, (q. v.) a final concord or agreement.

Constituting a limit or boundary, as of land. *Arbor finalis*; a boundary tree. See *Arbor, Finis*.

FINALIS CONCORDIA. L. Lat. In old conveyancing. A final concord; a fine of lands. *Talis concordia finalis dicitur, eo quod finem imponit negotio, adeo ut neutra pars litigantium ab eo de cætero poterit recedere*; such a concord is called final because it puts an end to the matter, so that neither of the litigating parties can afterwards recede from it. *Glanv.* lib. 9, c. 3. *Dicitur finalis concordia, et ideo finalis quia imponit finem litibus*; it is called a final concord because it puts an end to suits. *Bract.* fol. 435 b. These passages are descriptive of a fine when it was in the form of an actual suit.

FIND. To ascertain upon judicial examination and inquiry; to ascertain and declare the existence of one or more facts judicially. A jury are said to *find* a deed or a will in a special verdict. *Vaugh.* 84, 85. A jury *find* a certain amount of damages for a plaintiff.

To determine an issue of fact in favor of one or the other party, and to declare such determination to a court. A jury "*find* for the plaintiff," or "for the defendant."

FINDING. In practice. The result of a judicial examination or inquiry, especially into some matter of fact; the statement to a court of such result.

This term is most commonly applied to the making up and delivery, by a jury, of their verdict. See *Verdict*. But Lord Coke applies it to the judgment of the court itself. "There is one *finding* by the jury and another by the judges, and when the defendant confesses it, &c., the judges *find* sufficient matter before them to give judgment." 11 *Co.* 30, *Poulter's case*.

FINDING. One of the modes of acquiring a title to goods by occupancy. 2 *Kent's Com.* 356—360, and notes.

The finder of property who knows the owner, or has reason to believe who he is,

is bound to restore it; and is guilty of larceny if he fraudulently converts it to his own use. 1 *Parker's Crim. R.* 9.

FINE. [L. Fr. *fin, feyn, fyne, fin*; from Lat. *finis*, an end.] In English law. A sum of money or price (*pretium*) paid for obtaining a benefit, favor or privilege; as the ancient fines for obtaining a writ, and for alienation; and the modern fines for admission to a copyhold, for obtaining or renewing a lease.* *Fleta*, lib. 2, c. 13, §§ 12, 13. 8 *Co.* 59 b, *Beecher's case*. See 2 *Selden's R.* 475. See *Fine for alienation*.

A sum of money paid by an offender in satisfaction of his offence, and as a punishment (*pœna*) for it.* 8 *Co.* 59 b. See *Fine (or Mulct)*.

A species of conveyance or assurance, the effect of which was to make men enjoy their lands and inheritances in peace, (*par.*)* 8 *Co. ub. sup.* See *Fine of lands*. All these, in the words of Lord Coke, "are called *fines* because they are the *end*, or causes of the *end* of all the said businesses." 8 *Co. ub. sup.*

FINE FOR ALIENATION. In feudal law. A sum of money paid to the lord by a tenant, whenever he had occasion to alienate, or make over his land to another: a sum paid for license to alienate the land. One of the incidents of tenure by knight-service. 2 *Bl. Com.* 71, 72. 1 *Steph. Com.* 165, 180.

Fines were expressly reserved to copyhold tenures, when tenure by knight-service was abolished by the statute 12 Car. II. Hence they are, in general, still payable, in England, to the lord, on the alienation of copyhold estates. 1 *Steph. Com.* 208. 2 *Id.* 47, 48. 1 *Crabb's Real Prop.* 615—628.

FINE (or MULCT.) In criminal law and general practice. A payment of money imposed upon a party as a punishment for an offence. A pecuniary punishment imposed by some court of record, and usually under the authority of some statute. See *Amercement*.—A pecuniary punishment imposed by the judgment of a court, upon a person convicted of crime. Wheeler, J. 14 *Texas R.* 398. A fine is a judgment, but not such a judgment as can be claimed to bear interest. *Id. ibid.* Fines are more properly sentences than judgments, in the sense of recoveries in civil actions. *Id.* 399.

* * According to Spelman, the word *fine* was not used in this sense, in England, before the Norman invasion. It was ap-

plied originally to the heavier kind of payment, imposed for grave offences (*multa gravior, gravioribus delictis imposita*), answering to the Saxon *wita major*, and so distinguished from an *amercement*. *Spelman*, voc. *Finis*. See *Amercement*. It was applied also to a pecuniary mulct inflicted by the courts on a stranger, in contradistinction to an *amercement*, which was imposed upon their own officers and ministers. 8 Co. 40 b, *Griesley's case*. 4 Bl. Com. 380. 4 Steph. Com. 442. Fines and *amergements* are both mentioned in *Magna Charta*. *Mag. Cart. Joh. c. 55*.

The radical idea of the word corresponds closely with its obvious derivation from the Lat. *finis*:—a sum paid to end a matter; as to atone for an offence; to be delivered from a punishment. Thus, in old practice, where a party had been punished by imprisonment, he was frequently allowed to be discharged on payment of a *fine*; his punishment being by such payment ended. *Reg. Orig.* 222 b, 232. *Reg. Jud.* 25. A party fined or paying a fine was said *finem facere*, (q. v.) So, in modern practice, where a party is fined, and ordered to stand committed until the fine is paid, the payment has the same effect of putting an end to the imprisonment. And in any case where a fine constitutes the sole punishment of a party, its payment puts an end to the offence for which it was imposed, or to the legal liability growing out of such offence.

To FINE. To impose a pecuniary punishment; to order, adjudge or sentence that an offender pay a certain sum of money as a punishment for his offence. The Lat. *finire* anciently signified to pay a fine. See *Finire*.

FINE OF LANDS. [L. Fr. *fyn, feyn, fin*; L. Lat. *finis, finalis concordia*.] In conveyancing. A species of conveyance or assurance by matter of record, formerly in extensive use in England, in the form of a fictitious suit, commenced by the party to whom the land was intended to be conveyed, against the party intending to convey, and compromised or terminated by the acknowledgment of the latter that such land was the right of the former.—An amicable composition of a fictitious suit, by leave of the court, in the shape of an agreement or concord, (*concordia*), enrolled of record, by which the defendant, or deforciant (as he was usually called,) acknowledged the land for which the suit was supposed to be

brought, to be the right of the complainant.* *Glanv. lib. 8, c. 3. Shep. Touch.* 2. 2 Bl. Com. 349. *Watkins on Conveyancing*, 252. *Burton's Real Prop.* 20, pl. 67. 2 Wooddes. *Lect.* 186. 1 Steph. Com. 515. Called also, anciently, a *final concord*, because it put an end to the matter or suit, so that neither of the parties could afterwards recede from it. See *Finalis concordia*.

The acknowledgment, *conusance*, or recognition of right made in this pretended suit, was of the substance and essence of the fine, being, in fact, itself the conveyance of the land; the other proceedings being merely auxiliary. Hence the party intending to convey, (or nominal defendant,) was called the *conusor*, or *cognizor*, that is, the acknowledging party; and the party to whom the conveyance was made, the *conusee* or *cognizee*. *Shep. Touch.* (by Preston,) 3—5. 1 Steph. Com. 517. 2 Bl. Com. 350, 351. Hence, also, a fine was said to be an acknowledgment of a feoffment on record. *Id.* 348. It was, in fact, a solemn conveyance on record, from the cognizor to the cognizee. *Id.* 355. Fines were recently abolished in England by statute 3 & 4 Will. IV. c. 74, and have been either expressly abolished, or become entirely obsolete, in most of the United States. 1 Steph. Com. 514, 515. 4 Kent's Com. 497. They do not appear to have ever been adopted in New-England. Story, J. 4 Mason's R. 55.

* * The peculiar efficacy of a *fine* consisted in its being not only a solemn transaction in a court of record, but a transaction in the shape of the acknowledgment of the right of a litigating party, and having the same effect with an actual adjudication of the court upon the title of the lands conveyed by it. It was, indeed, in its origin (like a common recovery,) an actual suit commenced at law for the recovery of the possession of the land, but being found competent to confer a title in cases where the ordinary conveyances would not suffice, it was at length adopted as a mere means of transfer between parties not really standing in the relation of adverse litigants. 1 Steph. Com. 515. That is to say, the form of a suit was preserved for the purpose of basing upon it, or extracting from it, the pretended compromise or confession of title, but real conveyance, which it was intended to give. For this purpose, after a conveyance of lands had been agreed upon, the

party to whom they were to be conveyed commenced, in form, an action or suit at law against the other; generally, an action of covenant, in the Court of Common Pleas, by suing out a writ of covenant, denominated (from its initial words, when the proceedings were in Latin,) a writ of *precipere quod teneat conventionem*, the foundation of which was a supposed agreement or covenant that the one should convey the lands to the other; on the breach of which agreement the action was brought. The suit being thus commenced, there followed, in the next place, the *licentia concordandi*, or leave to agree, (that is, to compromise or settle the suit,) supposed to be applied for by the defendant or deforciant, and granted by the court on payment of a sum of money, called the king's silver, or post fine. Next came the *concord*, or agreement itself, (anciently called the *peace*,) being an acknowledgment or conuance by the deforciant, that the lands in question were the right of the complainant. This concord was the foundation or substance of the fine; being, in form and in fact, the grant or conveyance intended to be given, and was *acknowledged* either openly in court, or before one of the judges, or before two or more commissioners empowered by a special authority. With this acknowledgment, all the *essential* parts of the fine were completed. There remained, however, two more proceedings to complete it in *form*; of which the next was the *note of the fine*, which was only an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. This was to be enrolled of record in the proper office, by direction of the statute 5 Hen. IV. c. 14. The last of the proceedings was the *foot of the fine*, or conclusion of it, which included the whole matter, reciting the parties, day, year and place, and before whom it was acknowledged or levied. Of this there were indentures made, or engrossed at the chirographer's office, and delivered to the cognizor and the cognizee, usually beginning thus: *Hæc est finalis concordia*, (This is the final agreement,) and then reciting the whole proceeding at length. And thus the fine was completely levied at common law. To render it, however, more universally public, it was directed by statute 4 Hen. VII. c. 24, that a fine, after engrossing, should be openly and solemnly read and proclaimed in court, sixteen times, viz.,

four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by stat. 31 Eliz. c. 2, and these proclamations were endorsed on the back of the record. 2 *Bl. Com.* 350—352. 1 *Steph. Com.* 516—518. *Skep. Touch.* 3, 5, *et seq.* 5 *Co.* 39.

FINE SUR COGNIZANCE DE DROIT, COME CEO QUE IL AD DE SON DONE. L. Fr. A fine upon acknowledgment of the right, as that which he hath of his gift; that is, upon acknowledgment of the right of the cognizee, as that which he hath of the gift of the cognizor. The best and surest, and most usual kind of fine, by which the deforciant acknowledged a former feoffment, or gift in possession to have been made by him to the plaintiff; hence called a feoffment of record. 2 *Bl. Com.* 352. 1 *Steph. Com.* 518. See *Fine of lands*.

FINE SUR COGNIZANCE DE DROIT TANTUM. L. Fr. and Lat. A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor. This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519. See *supra*.

FINE SUR CONCESSIT. L. Fr. and Lat. A fine upon *concessit*, (he hath granted.) A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519.

FINE SUR DON, GRANT ET RENDER. L. Fr. A fine upon gift, grant and render. A double kind of fine, comprehending the fine *sur cognizance de droit come ceo*, &c., and the fine *sur concessit*; and which might be used to create particular limitations of estate. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519.

FINE AND RECOVERY ACT. The English statutes 3 & 4 Will. IV. c. 74; for abolishing fines and recoveries. 1 *Steph. Com.* 514, *et seq.*

FINE FORCE. L. Fr. [*fine*, from Fr. *fin*, crafty or subtle; or artificial or exact.] In old English law. An absolute necessity or constraint, not avoidable. When a man was constrained to do that which he could in no way avoid, he was said to do it *de*

fine force. Cowell. *Old N. Brev.* fol. 78. *Stat. 35 Hen. VIII.* c. 12. So, *à fine force*, (q. v.) The word *fine* seems to be used in this phrase, in the same sense as the modern word *pure*.

FINEM FACERE. L. Lat. In feudal law. To make a composition or compromise; to renounce or relinquish a claim for a consideration. *Finem et refutationem fecit*; made a fine and release. *Feud. Lib. 2*, tit. 49. And see *Skene de Verb. Sign. voc. Finis*.

FINEM FACERE. L. Lat. In old English and Scotch practice. To make an end, or settlement; to make or pay a fine. *Finem fecit nobiscum*; he made a fine with us. *Reg. Orig.* 232. *Bract.* fol. 154. *Fleta*, lib. 2, c. 60, § 35. *Omnes fines qui facti sunt nobiscum*; all fines which have been made with us. *Mag. Cart. Johan.* c. 55. *Finem facere cum rege*; "to fine with the king, or to make ane finance and satisfie him for any trespassse committed against him or his lawes." *Skene de Verb. Signif.*

To levy a fine. *Bract.* fol. 106.

FINES LE ROY. L. Fr. In old English law. The king's fines. Fines formerly payable to the king for any contempt or offence, as where one committed any trespass, or falsely denied his own deed, or did any thing in contempt of law. *Termes de la Ley*.

FINIRE. L. Lat. [from *finis*, a fine.] In old English law. To fine, or pay a fine, upon composition. *Rog. Hoveden*, 783, cited in Cowell. To end or finish a matter.

FINIS. Lat. In old English law and practice. An end or termination. *Finis unius diei est principium alterius*; the end of one day is the beginning of the next. 2 *Bulst.* 305. *Finis rei attendendus est*. The end of a thing is to be attended to. 3 *Inst.* 51. The means by which a crime is accomplished is a subordinate consideration. *Id. ibid.*

A fine, or payment of money, as an end, satisfaction or settlement of a claim, offence, or other matter. *Reg. Orig.* 223 b, 232, 179. *Reg. Jud.* 25 a. See *Fine*.

A fine or conveyance of land, as the end or settlement of a pretended suit; or as the end of all controversy respecting the title, (*quia finem imponit litibus*.) See *Fine of lands*.

A terminus, limit, or boundary of land. *Bundæ et metæ et rationabiles divisæ, quæ ponuntur in terminis et finibus agrorum.* *Bract.* fol. 166, 167. See *Divisa*.

FINITIO. L. Lat. [from *finis*, an end.]

In old records. An ending or finishing; death, as the end of life; (*quia vita finitur morte*.) Cowell. *Holthouse*.

FINIUM REGUNDORUM ACTIO.

In the civil law. Action for regulating boundaries. The name of an action which lay between those who had lands bordering on each other, (*qui confines agros habent*,) to settle disputed boundaries. *Inst.* 4. 6. 20. *Id.* 4. 17. 6. *Cooper's notes in loc. Dig.* 10. 1. *Cod.* 3. 39. 1 *Mackeld. Civ. Law*, 286, § 271.

FIRDFARE, Ferdfare, Herdfare. Sax. [from *fird*, an expedition or military service, and *fare*, a going.] In old English law. A summoning forth to a military expedition, (*indictio ad protectionem militarem*.) *Spelman*.

An acquittance from going to war. *Fleta*, lib. 1, c. 47, § 23. Cowell, *voc. Ferdfare*.

FIRDSOCNE. Sax. [from *fird*, military service, and *socne*, liberty.] In old English law. Exemption from military service. *Spelman*.

FIRDWITE, Ferdwite, Ferdwyte. Sax. [from *fird*, military service, and *wite*, a mulct or fine.] In old English law. A fine for refusing military service, (*multa detrectantis militiam*.) *Spelman*.

A fine imposed for murder committed in the army; an acquittance of such fine. *Fleta*, lib. 1, c. 47, § 15. *Chart.* 11 *Hen. III.* m. 33, cited in Cowell.

FIRE, in insurance, has the ordinary or popular meaning of ignition or burning. "Fire by lightning," in a policy, means actual burning by lightning, and not prostration or destruction without burning. 4 *Comstock's R.* 326. It was argued in this case that lightning was fire. But the court held it unnecessary to determine whether this were so, scientifically considered. *Id.*

FIRE AND SWORD, Letters of. In old Scotch law. Letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. *Bell's Dict.*

FIREBARE. Sax. In old records. A beacon, or high tower by the sea side, wherein were lights, either to direct sailors in the night, or to give warning of an enemy. Cowell. *Ordinat. temp. Edw. II.* cited *ibid.*

FIREBOTE, Fireboot. Sax. [from *fire*, and *bote*, an allowance.] An allowance of sufficient wood for fuel, for the use

of a tenant for life or years. 2 *Bl. Com.* 35. 2 *Crabb's Real Prop.* 76, § 1044. *Spelman*, voc. *Bota*. Called in the old books, *estoverium arlendi*. See *Bote, Estovers*. In an old English case, it was held by the court that lessee for life or for years, by the common law, cannot take fuel but of bushes and small wood, and not of timber trees. But if the lessor, in his lease, granteth *fire-boot*, if the lessee cannot have sufficient fuel as above, &c. he may take great trees. 3 *Leon.* 16, case 38.

FIRE INSURANCE. A contract of insurance, by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. 3 *Kent's Com.* 370. *Hughes on Ins.* 385. *Angell on Fire Ins.* ch. 2, § 7. See *Fire policy*.

FIRE ORDEAL. In Saxon and old English law. The ordeal or trial by red-hot iron; which was performed either by taking up in the hand a piece of red-hot iron, of one, two or three pounds weight, or by stepping barefoot and blindfolded over nine red-hot ploughshares laid lengthwise at unequal distances. 4 *Bl. Com.* 343. *Cowell*. See *Ordeal*.

FIRE POLICY. A contract of insurance, by which, in consideration of a single or periodical payment of premium, (as the case may be,) the company engages to pay to the assured such loss as may occur by fire to his property therein described, within the period or periods therein specified, to an amount not exceeding a particular sum fixed for that purpose, by the policy. 2 *Steph. Com.* 180. See *Angell on Fire Ins.* ch. 2, § 12, *et seq.* See *Policy, Fire Insurance*.

FIRLOT. A Scotch measure, containing two gallons and a pint. *Spelman*.

FIRMA. L. Lat. [from Sax. *feorme*, *fearme*, provisions.] In old English and Scotch law. A firm, ferm, or farm; a rent reserved on letting lands; (*reditus qui in elocandis prædiis domino elocanti reservatur*.) Anciently reserved in provisions. *Spelman*. *Blount. Precep. Will. Cong.* cited *ibid.* *Blount*, voc. *Hordeum palmale*. *Skene de Verb. Sign.* voc. *Firmarius*. See *Farm, Ferm*.

A feast or entertainment. *Spelman*. *Huntingdon, Hist.* lib. 6 in *An.* 23 *Edu.* *Conf.* cited *ibid.* *Ranulf. Cestriens.* cited

ibid. *Firma noctis*; a night's term; provisions or entertainment for a night, or the value of it; sometimes expressed by inversion, as *nox de firma*, a night of entertainment. *Firma diei*; a day's provisions or entertainment. These are common expressions in Domesday. *Spelman*.

A rent payable in money, (*reditus pecuniarius*.) *Spelman*. *Hoveden*, in *Johan. R. A. D.* 1199, cited *ibid.* *Pro certa firma inde annuatim reddenda*; for a certain rent thereof annually to be paid. *Reg. Orig.* 257 b. *De exitibus et proficuis, vel de firma domini nostri*; of the issues and profits, or of the rent of our lordship. *Id.* 265 b. *Cowell*, voc. *Firmaratio*. *Ad antiquas firmas*; at the old rents. *Mag. Cart. Johan.* c. 25. Called *alba firma*, *blanch firm*, or *white farm*, (qq. v.)

A lease or letting, (*elocatio*;) a term for years, (*terminus*.) *Adhuc viginti anni de firma illorum restent*; twenty years of their lease will yet remain. *Spelman*. *Ingulph. Sax. Hist. Croyl.* cited *ibid.* *Ad terminum, vel ad firmam*; for a term or term. *Bract.* fol. 30. *Salvo firmario firma et termino suo*; saving to the fermor, (termor or lessee) his farm and term. *Id.* fol. 166 b. *Non magis poterit firmarium ejicere de firma sua, quam tenentem aliquem de libero tenemento suo*; he can no more eject the fermor (or lessee) from his farm (or term,) than any tenant from his freehold. *Id.* fol. 220 b. *Fleta*, lib. 4, c. 31, § 4. *Ad firmam ponere vel dare*; to put or give for a ferm or farm. *Spelman*. *Chart. Hen. I. de Libert. Angl.* cited *ibid.* *Ad firmam dimittere, tradere, locare*; to demise, deliver, let for a farm. *Bract.* fol. 12 b, 44 b. See *To Farm let*.

A farm in the modern sense; a messuage and land, wood, &c., belonging to or used with it. *Co. Litt.* 5 a. *Shep. Touch.* 93. 3 *Leon.* 13. See *Farm*.

FIRMA FEODL. L. Lat. In old English law. A farm or lease of a fee; a fee farm. See *Feodi firma*.

FIRMARIUS. L. Lat. [from *firma*, a term.] In old English and Scotch law. A lessee for a term; one having a term, ferm or farm in lands. *Stat. Marlbr.* c. 24. *Bract.* fol. 12 b, 44 b, 166 b, 178, 226 b. *Fleta*, lib. 2, c. 55, § 8. 2 *Bl. Com.* 318. Called anciently *fermor*, and sometimes *firmary*. Hence *farmer*, (q. v.) *Firmarius nihil habet nisi tantum usum fructum*; the fermor or lessee has nothing but only the usufruct. *Bract.* fol. 961.

Id. fol. 318. *Salvo firmario firma et termino suo.* *Id.* fol. 166 b, 12 b, 178. Defined by Skene "a mail-payer, mailer or mail-man." *Firmarii* comprehended all such as held by lease for life or lives, or for years, by deed or without deed. 2 *Inst.* 145. See 7 *Ad. & El.* (N. S.) 637.

FIRMARATIO. L. Lat. [from *firma*, a lease, or term.] In old records. Farming (farming,) or holding to firm, (farm.) The firmary's or farmer's right to the lands and tenements let to him *ad firmam*. *Cowell.* *Stat. Eccles. Pauline*, *M.S.* cited *ibid.*

FIRMARIUM, Fermarium. L. Lat. [from *firma*, provisions.] In old records. A farmary; a place in monasteries, and elsewhere, where the poor were received and supplied with food. *Spelman.* Hence the word *infirmary*.

FIRMATIO. L. Lat. In the forest law. Doe season. *Cowell.*

Firmior et potentior est operatio legis quam dispositio hominis. The operation of the law is firmer and more powerful [or efficacious] than the disposition of man. *Co. Litt.* 102 a.

FIRMITAS. L. Lat. [from *firmus*, firm, sure.] In old European law. An assurance; a deed or charter confirmed by witnesses or seal, for assuring some privilege, &c. *Spelman.* *Capitular.* lib. 4, c. 37. *L. Alaman.* tit. 1, § 1, cited *ibid.*

FIRST FRUITS. [L. Lat. *primitiæ*.] In English ecclesiastical law. The first year's whole profits of every benefice or spiritual living in England, anciently paid by the incumbent to the pope, and forming, together with *tenths*, a revenue, which at the reformation was annexed to the crown by statute 26 Hen. VIII. c. 3. This revenue was, by charter of Queen Anne, confirmed by statute 2 Anne, c. 11, transferred to a perpetual fund (called from that circumstance Queen Anne's Bounty,) for the augmentation of poor livings. By statutes 5 & 6 Anne, benefices under £50 per annum, clear yearly value, were discharged from the payment of first fruits and tenths. 1 *Bl. Com.* 285, 286. 2 *Steph. Com.* 549, 550.

In feudal law. One year's profits of land which belonged to the king on the death of a tenant *in capite*; otherwise called *primer seisin*. One of the incidents to the old feudal tenures. 2 *Bl. Com.* 66, 67.

FIRST IMPRESSION. [Lat. *prima impressio*.] First occurrence; first pre-

sentation to a court for determination. See *Primæ impressionis*.

FIRST PURCHASER. The first acquirer (*perquisitor*,) of an estate. He who first acquired an estate to his family, or first brought an estate into the family which at present owns it, whether the same was transferred to him by sale, or by gift, or by any other method, except only that of descent. 2 *Bl. Com.* 220. 1 *Steph. Com.* 355. Styled among the Norman jurists, the *conqueror* or *conquereur*. *Grand Coust. Gloss.* c. 25. 1 *Steph. Com. ub. sup.* In the English law of descent, this phrase seems to be less used than formerly. See 1 *Steph. Com.* 357, chap. xi. And see the opinion of Story, J. 2 *Peters' R.* 58, 89—94.

FISC. [from Lat. *fiscus*, q. v.] The treasury or property of a prince or state. Hence *confiscate*, and the old word *confisk*, (q. v.)

FISCAL. [Lat. *fiscalis*.] Relating to, or connected with the treasury of a prince or state.

FISCAL JUDGE. [L. Lat. *judex fiscalis*.] An officer named in the laws of the barbarous nations of Europe; the same with the *grafio*, *graf*, *greve*, or *reeve*. *Spelman*, voc. *Grafio*. Called *fiscal*, because charged with the collection of public moneys, either directly, or by the imposition of fines. *Id.* In the Riparian law, he is said to be the same with the *comes* or count. *L. Ripuar.* tit. 35. *Esprit des Lois*, liv. 30, c. 18.

FISCUS. Lat. In the Roman law. The treasury of the prince or emperor, as distinguished from *ærarium*, which was the treasury of the state. *Spelman.* *Plin. Pan.* 36. *Tacit. Annal.* vi. 2. *Calv. Lex.*

The treasury or property of the state, as distinguished from the private property of the sovereign. *Dig.* 49. 14; *De jure fisci.* *Cod.* 10. 1. 1 *Mackeld. Civ. Law*, 149, § 144.

In English law. The king's treasury, as the repository of forfeited property. *Bona eorum fisco non vindicentur*,—*bona ipsorum confiscantur*; their goods shall not be claimed for the fisc or treasury,—their goods shall be confiscated. *Bract.* fol. 150.

The treasury of a noble, or of any private person. *Spelman.*

* * The use of this word, in the sense of a treasury, is derived from its primary meaning, a wicker basket, or hamper, (*sporta*, *clitella*,) in which money was kept by the Romans, and carried about. That

the early English kings sometimes carried their treasure with them in hampers of this kind, is shown by Spelman in a quotation from the Book of the Monastery of Ramsey, where a bishop is mentioned as having on one occasion borrowed of King Canute all the gold he had in his hampers, (in *clitellis regis*.) Spelman supposes this use of the word to be preserved in the hanaper or hamper office of the English court of chancery. But see 3 *Bl. Com.* 48, 49. Lord Coke speaks of a *fine* in hamper. 5 *Co.* 44. Lord Bacon traces this word and the old English word *pipe* to a similar origin. *Works*, iv. 133.

FISH ROYAL. See *Royal fish*.

FISHERY. [L. Lat. *piscaria*; L. Fr. *pescherie*.] A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed *piscary*, of which there are several kinds. 2 *Bl. Com.* 34, 39. 3 *Ken's Com.* 409—418. *Angell on Water-Courses*, § 61, *et seq.* *Angell on Tide-Waters*, 124, chap. 5. *United States Digest*, Fisheries. See *Common fishery*, *Free fishery*, *Several fishery*.

FISK. In Scotch law. The right of the crown to the movable estate of a person denounced rebel. *Bell's Dict.*

FIST. L. Fr. [from *faire*, to make or do.] Makes; made. *L'estate de celuy que fist le releas*; the estate of him who makes the release. *Litt.* sect. 305. *Fist son volunt*; made his will. 1 *And.* 3. *Fizmes*; we made. *Yearb.* H. 12 Hen. VI. 7.

Did. *Tout fist il le fait*; though he did the deed. *Britt.* c. 23.

Done. *Ou tiel fact si fist*; where such deed was done. *Rot. Parl.* 4 Hen. IV.

FISTUCA, *Festuca*. L. Lat. In old English law. A staff or wand, by the delivery of which the property in land or other thing was formerly transferred. Called also *baculus*, *virga* and *fustis*. *Spelman*.

FISTULA. Lat. In the civil law. A pipe for conveying water. *Dig.* 8. 2. 18.

FITZ. L. Fr. Son; a son. *Britt.* c. 27, 89. *Fitz en ventre sa mere*; a child unborn. 12 *Mod.* 286.

FIXTURE. A thing fixed to the freehold. *Archb. Landl. & Ten.* 359.—Any thing annexed to, (that is, fastened to, or connected with) the freehold. 2 *Smith's Lead. Cas.* 114.—An article of a personal nature affixed to the freehold. 2 *Ken's Com.* 344, 345, and note.—A thing of an accessory character, annexed to houses or

lands. 2 *Steph. Com.* 260.—A movable thing which, either by the operation of nature, or by human art, is connected with an immovable thing in such a manner as to constitute a part of it. 1 *Meckeld. Civ. Law*, 152, § 147.—An article which was a chattel, but which, by being physically annexed or affixed to the realty, became accessory to it, and part and parcel of it. 1 *Ohio St. R.* 511.—An article which, by being attached to the freehold, has been changed from a chattel to a part of the realty.* See 28 *Vermont R.* 428.—A chattel which has been substantially annexed to the freehold in such a manner as not to permit it to be separated from it, without material injury to itself or to the freehold.* See opinion of Bennett, J. *Id.* 433, 434. 10 *Richardson's (S. C.) Law R.* 135, 139, 140.—To be a *fixture*, a thing must, on the one hand, be of an accessory character, and, on the other, it must be in some actual union or connection with the principal subject, and not merely brought into contact with it.* 2 *Steph. Com.* 260.—Therefore the walls and floors of a house, being an original and necessary part of the principal subject, are not fixtures; and, on the other hand, buildings which merely rest upon the ground, without being fixed in, or to it, and pictures and glasses suspended against a wall, are in no sense fixtures. *Id.* *ibid.* *Archb. Landl. & Ten.* 362. But see *infra*.

* * Mr. Stephen considers the term *fixtures* as of popular origin. 2 *Steph. Com.* 260, note (i). It may be doubted, however, whether it is not derived, with the law of fixtures itself, from the civil law, in which term *adfixa*, or *affixa*, (things fixed or fastened,) was used to denote these accessories. *Dig.* 50. 16. 245. See *Affixus*. It is not used in the common law, as the same writer justly observes, with much uniformity of meaning. Properly, it denotes something fixed and permanent, as distinguished from that which is removable, (the Lat. *fixum*, having the sense not only of attachment or connection, but of *stability*;) and in this respect the popular coincides entirely with the primary legal meaning: the general rule being, that a fixture once annexed to the realty cannot be removed, or separated from it, as against the owner of the freehold or inheritance, to whom it belongs. 2 *Steph. Com.* 261. 2 *Smith's Lead. Cas.* 114. 2 *Ken's Com.*

343. From the various *exceptions* to this rule, however, which have been gradually established, a distinction has not only arisen between fixtures removable, and irremovable, but the word *fixtures* itself has been said to have acquired the peculiar meaning of chattels which have been annexed to the freehold, but *which are removable* at the will of the person who annexed them. 1 *Cr. M. & R.* 276. *Grady on Fixtures*, 1, 2. And see 35 *Eng. Law & Eq. R.* 173. More than this,—it has been said that the term *fixtures* does not necessarily mean things affixed to the freehold. 5 *Mees. & W.* 175. This goes to justify Mr. Chitty's remark, that *fixture* is a term in general denoting the very reverse of the name. 1 *Chitt. Gen. Pr.* 161. And this idea has been carried so far in Pennsylvania, as to have led to the establishment of an entirely new definition of a fixture, viz.: something *essential to the use of the freehold, whether actually fastened to it or not.* 2 *Watts & Serg.* 116, 390. See 6 *Greenleaf's R.* 157. On the other hand, and as the opposite extreme of this doctrine, it has been held in Connecticut that *mere annexation to the realty* was not sufficient to give the attribute of a fixture to a chattel personal, unless it was *so annexed* that an injury would result to the freehold from the mere act of removal. 9 *Conn. R.* 67. And see 14 *Mass. R.* 352. A middle ground has been taken in New-York, between these two opinions. 20 *Wendell's R.* 636. These conflicting decisions, which are collected in 2 *Smith's Leading Cases*, 121, (Am. editor's note,) have tended to unsettle the definition of the term *fixture*, or rather to introduce a variety of definitions which are, in a greater or less degree, departures from the primary meaning above given. The whole subject has recently been very elaborately discussed by the Supreme Courts of Vermont and Ohio. See 28 *Vermont R.* 428. 1 *Ohio St. R.* 511. And see 2 *Kernan's R.* 170. 26 *Alabama R.* 497, 498. Fixtures are now usually divided into several kinds; as *landlord's fixtures*, *tenant's fixtures*, *trade fixtures*, and *farm or agricultural fixtures.* *Archb. Landl. & Ten.* 359. See *United States Digest*, Fixtures.

FLAG, *Duty of the.* The ceremony of striking the flag and lowering the topsail of a vessel to the British flag, formerly practised as a solemn acknowledgment of

British sovereignty over the British seas. *Molloy de Jur. Mar.* 80, 82. Called, in an old record, "striking and veiling the bonnet." *Id.* 80, in *marg.*

FLAGELLAT'. [abbr. of *flagellatus*.] Whipped; scourged. An entry on old Scotch records. 1 *Pitt. Crim. Trials*, part 1, p. 7.

FLAGRANS. Lat. Burning; raging; in actual perpetration. *Flagrans bellum*; a war actually going on. *Flagrans crimen*; a crime in the act of perpetration, or just perpetrated. See *Flagrante*.

FLAGRANTE. Lat. [from *flagrans*, burning.] In the heat, excitement, or actual commission of an act. *Flagrante delicto—maleficio—crimine*; in the heat of the offence, in the very act, or immediately after. *Bract.* fol. 233, 233 b. *Fleta*, lib. 4, c. 27, § 16. 4 *Bl. Com.* 307. *T. Raym.* 219. *Flagrante disseisina.* *Bract.* fol. 162 b. *Flagrante facto.* *Id.* fol. 231 b. *Flagrante bello*; during actual war. 1 *Kent's Com.* 76.

FLANDRENSSES. L. Lat. In old English law. Inhabitants of Flanders; Flemings. *Sicut de terris Normannorum et Flandrentium.* *Bract.* fol. 87 b.

FLAVIANUM JUS. Lat. In the Roman law. The title of a book containing the forms of actions, published by Cneius Flavius, A. U. C. 449. 1 *Mackeld. Civ. Law*, 24, § 35. *Calv. Lex.*

FLEDWITE. Sax. [from *fled*, a fugitive, and *wite*, a fine.] In Saxon and old English law. A mulct or fine set upon an outlaw or fugitive, as the price of obtaining the king's pardon and peace. *Spelman*, voc. *Fletwite.* *Blount.*

The privilege of being quit from amerancements, when an outlawed fugitive came to the king's peace of his own will, or being licensed. *Rastal's Expos. of Words. Termes de la Ley.* Sometimes confounded with *fletwite*, (q. v.)

FLEET. A prison in London, so called from Fleet river or ditch, near which it stood. *Committatur gaolæ de Fleete.* *Fleta*, lib. 2, c. 70, § 13. *Selden's Diss. ad Flet.* c. 10, sect. 3. Formerly the prison of the Court of Chancery and Common Pleas. Now, by statutes 5 & 6 Vict. c. 22, 6 & 7 Vict. c. 20, consolidated with the Queen's Bench and Marshalsea prisons into one, called the Queen's Prison, which is made the prison of all the courts. 3 *Steph. Com.* 254. Tindal, C. J. 1 *Man. Gr. & S.* 463. See *Fleta*.

FLEM, *Flema, Flyma, Fleman*. [Sax. *flyma, flyman*.] In Saxon and old English law. A fugitive bondman or villein. *Spelman*.

The privilege of having the goods and fines of fugitives. *Id*.

FLEMENESFIRINTHE. Sax. Blount makes this to be properly *flymenasfyrinthe*, (Sax. *flyma*, a fugitive, and *fyrinthe*, a receiving;) the receiving or relieving a fugitive. *LL. Ina*, c. 29, 47. *LL. Hen. I. c. 10, 12. Cart. Edw. Conf. Monasterio de Waltham*. It seems to be the same with the *flemenfirma* of *Spelman*, (q. v.) In *Fleta*, the words *flemenessreive* and *flemenrenthe* are used to signify the right of having the chattels of one's fugitive tenants. *Fleta*, lib. 1, c. 47, § 12.

FLEMENESWITE. Sax. [from *flyma*, a fugitive, and *wite*, a fine.] In Saxon and old English law. A fine imposed upon a fugitive. *Spelman*, voc. *Flema*.

FLEMESWITE. Sax. [from *flame*, flight, and *wite*, a fine.] The same as *flemenesswite*, (q. v.) The liberty of having or claiming the chattels of a fugitive. *Blount*.

FLEMENFIRMA, *Flymenfirma*. Sax. and L. Lat. [from Sax. *flymen*, fugitives, and *firma*, from *feorme*, food.] In Saxon and old English law. The sustenance or support of fugitives, or outlaws. *LL. Hen. I. c. 13*.

The fine for such offence. *Id. c. 11. Spelman*.

FLETA. L. Lat. [from Sax. *fleoten*, to float or flow.] In old English law. An estuary; a stream, canal or ditch, where the tide ebbs and flows; (*æstuarium, fluentum, seu canalis quem aqua fluens et refluxuens occupat*.) *Spelman*. Hence the name of Fleet ditch in London, and of the Fleet prison which stood near it. *Id. Cowell*. See *Fleet*.

FLETA. The title of an ancient treatise on English law, supposed to have been written in the reign of Edward I. 2 *Reeves' Hist. Eng. Law*, 280. *Crabb's Hist.* 198. *Selden's Diss. ad Fletum*, c. 10. Its full title is *Fleta, seu Commentarius Juris Anglicani*; the name of *Fleta* being given to it, according to the author's explanation, because it was written during his confinement in the *Fleet* prison, from which circumstance it has been conjectured that he was one of those judges who fell under the displeasure of the king. *Id. ibid. Fleta*, præf. It is a general treatise on the law, in six books, written in

Latin in the method of Bracton, from whom and Glanville the author copies largely. Mr. Reeves indeed calls him a mere imitator, and his work is obviously a compendium of Bracton, with considerable additions, however, showing what alterations had taken place in the law since Bracton's time. It embodies the provisions of all the important statutes of the period, but refers very sparingly to judicial decisions. It also contains much valuable historical matter, and is the source of many of the quotations contained in Lord Coke's *Institutes and Reports*. Mr. Selden has written a learned *Dissertation* on *Fleta*, which is annexed to most of the editions of this work. A large number of the errors which abound in *Fleta* are corrected in the errata to the edition of 1647, but many more have been left unnoticed.

FLETH, *Flet*. Sax. In old English law. *Land. Co. Litt.* 4 a.

A house. *Blount*, voc. *Flem & Fleth*.

FLETWITE. The same as *flitwite*, (q. v.)

FLITWITE, *Fletwite*. Sax. [Scotch *flichtwite*; from Sax. *flit*, strife; and *wite*, a fine.] In Saxon and old English law. A fine or mulct imposed on account of brawls and quarrels, (*mulcta ob contentiones, rixas et jurgia imposita*.) *Spelman*, voc. *Fletwite*.

FLOAT. In American land law. A certificate authorizing the entry of land. 20 *Howard's R.* 501, 504. A term peculiar to the practice of the Western States.

FLOATABLE. Used for floating. A floatable stream is a stream used for floating logs, rafts, &c. 2 *Michigan* (Gibbs) *R.* 519. See *Navigable stream*.

FLOD, *Flud*. In old English law. Flood or high tide. *Dilationem habebit quadraginta dierum, et duorum flodorum et unius ebbæ*; he shall have a delay (or further time) of forty days, and two flood tides and one ebb. *Bract.* fol. 163. See *Flud*.

FLODEMARK. O. Eng. Flood-mark; high-water mark. The mark which the sea, at flowing water and highest tide, makes on the shore. *Blount*. See *Floodmarke*.

FLORENTINE PANDECTS. A copy of the Pandects discovered accidentally about the year 1137, at Amalphi, a town in Italy near Salerno. From Amalphi, the copy found its way to Pisa, and Pisa having submitted to the Florentines in 1406,

the copy was removed in great triumph to Florence. By direction of the magistrates of the town, it was immediately bound in a superb manner, and deposited in a costly chest. Formerly, these Pandects were shown only by torch-light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collated by Politian, Bolognini, and Antonius Augustinus; an exact copy of them was published in 1553 by Franciscus Taurellus. For its accuracy and beauty, this edition ranks high among the ornaments of the press. Brenchman, who collated the manuscript about 1710, refers it to the sixth century. *Butler's Horæ Juridicæ*, 62, 63. And see *Id.* 64, 65, 66, note, for an account of the works from which the foregoing notice was extracted.

FLOT. L. Fr. A flow or flood; flood tide. *Un ebbe et un flot.* *Britt.* c. 44. *Un flot et un retret.* *Id.* c. 123.

FLOTA. L. Lat. [L. Fr. *flote.*] In old English law. A fleet. *Flota navium*; a fleet of ships. *Blount. Towns.* Pl. 68.

FLOTAGES. Such things as, by accident, float or swim on the top of the sea, or great rivers. *Blount.*

FLOTANS. L. Lat. Floating. *Towns.* Pl. 68.

FLOTSAM, Floatsam, Flotson. [from Sax. *floten*, to float.] Floating on the water. Goods lost by shipwreck, and which lie floating on the top of the water. *Cowell. Blount. Termes de la Ley.* 5 Co. 106. 1 *Bl. Com.* 292. 1 *Crabb's Real Prop.* 508, § 657. This barbarous and uncouth appellation, as Blackstone terms it, is supposed by Spelman to be of German origin. It is exclusively applied to such goods as are cast out of a vessel by the violence of the winds or sea, as distinguished from such as are intentionally thrown overboard. See *Jetsam.*

FLOTSON. The same with *Flotsam*, (q. v.) *Hale de Jur. Mar.* pars 1, c. 7.

FLOOD-MARKE, Fludmerk. O. Eng. In old English law. High-water mark; flood-mark. 1 *And.* 88, 89. *Enter le low water marke et le floud marke ou banke.* *Id.* 88. *Infra fluxum maris vulgat' dici' flud-merk.* *Id.* 89.

FLUCTUS. L. Lat. In old English law. Flood; flow; flood-tide. *Bract.* fol. 255. Called, also, *fluvius* and *flumen.*

FLUD. In old English law. Flood or flood-tide. *Dantur essoniato—quadraginta*

dies ad minus, et unum Flud et unum ebbe. *Bract.* fol. 338. See *Id.* fol. 338 b, 339.

FLUMEN. Lat. In the civil law. A river. *Dig.* 43. 12. Distinguished into public and private. *Id.* 43. 12. 3. For other distinctions see *Id.* 43. 12. 2.

In old English law. Flood, or flood-tide. *Fleta*, lib. 4, c. 2, § 2.

FLUMINÆ VOLUCRES. Lat. Wild fowl; water-fowl. 11 *East*, 571, note.

FLUVIUS. Lat. In old English law. A river. *Fluvii regales*; royal streams. Public rivers for public passage, (Fr. *haut stremes le roy.*) So called, not in reference to the propriety of the river, but to the public use; all things of public safety and convenience being, in a special manner, under the king's care, supervision and protection. *Hale de Jur. Mar.* pars 1, c. 2.

Flood or flood-tide. *Fleta*, lib. 6, c. 8, § 2.

FLUXUS. Lat. In old English law. Flow. *Per fluxum et refluxum maris*; by the flow and re-flow of the sea. *Dal.* pl. 10.

FLYMA, (pl. *Flymen.*) Sax. A fugitive or outlaw. *Spelman*, voc. *Flema.*

FOCALE. L. Lat. [from *focus*, a hearth.] In old English law. Firewood, or fuel. *Cowell. Towns.* Pl. 68. See *Hardr.* 38 b, arg.

FODERUM, Foderus, Fodrum, Fodrus. L. Lat. [Sax. *foder.*] In old English law. Food for cattle; fodder. *Spelman.* Calvin calls it a German word.

In feudal law. A contribution of corn or grain for the use of the king's army. *Spelman. Cowell. Hotoman de Verb. Feudal. Calv. Lex. Id. De Verb. Feud.*

FODINA. Lat. A mine. *Co. Litt.* 6 a.

FOEDUS. Lat. In international law. A treaty. *Grot. de Jur. Belli*, lib. 2, c. 15. *Fœdera*; treaties. *Wheaton's Intern. Law*, 342; part 3, ch. 3, § 10.

FŒNUS NAUTICUM. Lat. In the civil law. Nautical or maritime interest. An extraordinary rate of interest, agreed to be paid for the loan of money on the hazard of a voyage; sometimes called *usura maritima.* *Dig.* 22. 2. *Cod.* 4. 33. 2 *Bl. Com.* 458. *Molloy de Jur. Mar.* 357. *Locen. de Jur. Mar.* lib. 2, c. 6. 3 *Kent's Com.* 354, note.

FOER, Fower, Forer. L. Fr. To dig. *Kelham.*

FOESA. L. Lat. In old records. Grass; herbage. 2 *Mon. Angl.* 906 b. *Cowell.*

FOGAGIUM. L. Lat. In old English law. Fogage or fog; a kind of rank grass of late growth, and not eaten in summer. *Spelman. Cowell.* Distinguished from hay. *Com.* 549, 550.

FOL Fr. In French feudal law. Faith; fealty. *Guyot, Inst. Feod.* chap. 2. See *Foy*.

FOINESUN. L. Fr. In old English law. The fawning, or fawning time of deer. *Spelman.* See *Feonatio*.

FOIAL. L. Fr. Faithful. *Yearb.* H. 2 Edw. III. 20. *Kelham.*

FOIER. L. Fr. To do. *Kelham.* A corrupt form of *faire*, (q. v.) *Foit, foite*; done; a deed. *Id.* See *Fait*.

FOIRFAULT. Sc. In old Scotch law. To forfeit. 1 *How. St. Trials*, 927.

FOIRTHOCHT. Sc. In old Scotch law. Forethought; premeditated. 1 *Pitt. Cr. Trials*, part 1, p. 90.

FOITS, Foitz, Fiez. L. Fr. Times. *Un foit*; one time; once. *Autre foit*; another time; before. *Ascun foits*; sometimes. *Sorent foits*; oftentimes. *Tout foits*; at all times; always. L. Fr. *Dict.* *Une foitz, deux foitz, et la tierce foitz*; once, twice and the third time. *Britt.* c. 30. *Deux fiez par an*; twice a year. *Conf. Cartar.* 25 Edw. I.

FOL, Fole. L. Fr. A fool; an idiot; *Fol nastre*; a born or natural fool. *Britt.* c. 36. *Fols nastres.* *Id.* c. 34.

Foolish. *Fet Assaver*, § 45.

FOLCLAND, Folkland. Sax. [from *folc*, people, and *land*.] In Saxon law. Land of the people or public, (*terra popularis*.) *Spelman.* So called, either because usually distributed among the common people, or because it was the property of the whole community; or, finally, because it was held by common right or law.* A species of land among the Saxons, which was not held by any assurance in writing, and in that respect distinguished from *bocland*. *Terra popularis quæ jure communi possidetur, vel sine scripto.* *Spelman.*—Land held without writing, paying an annual rent, and liable to certain services. *Somner.* See *Bocland*.

Folcland has been supposed, by Sir W. Blackstone and other writers, to have been land held in villeinage, and resumable at the discretion of the lord. 2 *Bl. Com.* 90. *Crabb's Hist.* 13. *Gilb. C. Pleas, Introd.* 15. *Cowell.* Later researches into Saxon antiquities, however, have shown that though it was subject to many bur-

thens and exactions, it might be held by freemen of all ranks and conditions. It is now supposed to have been the property of the community, which was parcelled out to individuals in the *folc-mote*, and granted for a certain term, on the expiration of which it reverted to the community. *Wharton's Lex. Allen on the Prerogative*, 140, et seq. 1 *Spence's Chancery*, 8.

FOLCMOTE, Folkmote, Folcgemote. Sax. [from *folc*, people, and *mote*, or *gemote*, meeting.] In Saxon law. A meeting of the people; a general assembly of the people, to consider and order matters of the commonwealth. *Somner. Spelman, voc. Gemotum.*—Any popular or public meeting of all the *folk* or people of a place, or district. *Brande.* See *Gemote*.

A county court; an assembly of the people or freeholders of a county, (*consensus comitatús*.) Otherwise called the *shiremote*. *Spelman.*

A city court; an assembly of the inhabitants of a city or borough, (*consensus civitatis seu burgi*.) Otherwise called the *burgmote*. *Spelman.* The *folcmote* or city court of London is mentioned in ancient records. *Id. Crabb's Hist.* 141. The term seems to have been generally applied to all courts that were adapted to the convenience of the people within any district. *Id.* 26. See *Cowell*.

FOLCRIGHT, Folkright. [Sax. *folc-rihte*; from *folc*, people, and *rihte*, right; Lat. *jus commune*.] Common right; that which is equally the right of all.* This word occurs in the laws of King Edward the elder, and is thought by Lambard to be the same with *common law*; which, however, is questioned by *Spelman. LL. Edw. Senioris*, c. 1. 1 *Bl. Com.* 65. *Spelman, voc. Jus commune*.

FOLDAGE. See *Faldage*.

FOLD COURSE. [L. Lat. *faldæ cursus*.] In English law. Land used as a sheep walk. *Hargr. Co. Litt.* note 23, lib. 1.

Land to which is appurtenant the sole right of folding the cattle of others. *Id.*

The right of folding cattle. *Id.*

Common of foldage, or *faldage*. *Id.* See *Faldage, Faldæ cursus*.

FOLGARE, Fulgare. L. Lat. [from Sax. *folgan*, to serve or follow.] In Saxon law. To establish one's self in a friborg or frankpledge, (*prosistere se in aliquo coate-bernio, friborga, seu fidejussione*.) *Spelman. LL. Aluredi*, c. 33, cited *ibid*.

To become the dependent or follower of another, (*traderes se alicui in clientelam*;) to serve or follow, (*servire, sequi, sectari*.) *Spelman*.

FOLGARII, *Folgeres*. L. Lat. [from Sax. *folger*, a follower.] In Saxon law. Followers; retainers; dependents or servants. *Spelman*. LL. Hen. I. c. 9, cited *ibid*.

FOLGHERES. Sax. In old English law. Followers or servants. *Alii qui illis deserviunt, qui dicuntur folgheres*. *Bract*. fol. 124 b.

FOLIO. [from Lat. *folium*, a leaf.] A leaf of a book or manuscript.

In old practice. A leaf or sheet of parchment or paper, containing a certain number of words.

In modern practice. A certain number of words, without reference to the paper or parchment on which they are written. In English practice, a *folio* in law proceedings is seventy-two words; in chancery, ninety words. *Wharton's Lex*. In New-York, a *folio* was formerly seventy-two words. 2 *Rev. Laws* of 1813, 15, *et seq*. It is now one hundred words, counting every figure, necessarily used, as a word. 2 *Rev. St.* [650,] 542, § 4. *Id.* [753, § 16,] 631, § 17.

The term *folio*, in this last sense, seems to have originated in the practice of writing a certain number of words on a sheet, which, becoming invariable, gave the name of the sheet or leaf (*folio*.) to the number of words written upon it. 3 *Bl. Com.* 323. Hence the expression in the New-York act first quoted above,—“each sheet containing seventy-two words.”

FONT, *Fount*. L. Fr. [from *faire*, to make.] (They) make or made. L. Fr. *Dict*.

(They) do or did. *Id*.

FONTANA. Lat. A fountain or spring. *Bract*. fol. 233.

FOOT OF A FINE. [L. Fr. *pee*.] In old conveyancing. The conclusion of a fine, reciting the parties, day, year and place, and before whom it was acknowledged or levied. 2 *Bl. Com.* 351.

FOOTGELD. [Sax. *geld*, a payment or fine.] In old English law. An amercia-ment for not cutting out the balls of dogs' feet in the forest. *Termes de la Ley*. *Manwood*, c. 25, num. 3. *Cowell*.

FOOT-PRINTS. In the law of evidence. Impressions made upon earth, snow or other surface, by the feet of persons or by

the shoes, boots or other covering of the feet. *Burr. Circ. Evid.* 264.

FOR, *Fore*, *Fors*. L. Fr. [from Lat. *foris*.] Out; without. See *Fors*.

FOR. Fr. [from Lat. *forum*.] In French law. A tribunal. *Le for interieur*; the interior forum; the tribunal of conscience. *Poth. Oblig.* part 1, ch. 1, sect. 1, art. 3, § 4.

“FOR,” [Lat. *pro*,] in all contracts imports a condition precedent; (*for* so much money.) *Hob.* 41, cited by Lord Ellenborough, 5 *M. & S.* 187.

FOR THAT WHEREAS. [L. Lat. *pro eo videlicet quod cum*.] In pleading. Formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. 1 *Instr. Cler.* 170. 1 *Burr. Pr.* 127. In trespass, where there was no recital, the expression used was “For that,” (*de eo quod*.) *Id.* 1 *Inst. Cl.* 202.

FOR WHOM IT MAY CONCERN. (Fr. *pour compt de qui il appartient*.) A general clause in policies of insurance, intended to embrace all persons who have an insurable interest in the property, and a lawful right to be insured. 2 *Duer on Ins.* 29, § 21. 1 *Phillips on Ins.* 152.

FORANEUS. Lat. [from *foris*, without.] One from without; a foreigner; a stranger. *Calv. Lex*.

FORATHE. [from Sax. *for*, and *athe*, oath.] In old forest law. One who could swear or make oath for another. *Spelman*.

FORBALCA. L. Lat. In old records. A forebalk; a balk (that is, an unploughed piece of land,) lying forward or next the highway. *Cowell*.

FORBANNITUS, *Forisbannitus*. L. Lat. [from Ital. *fore*, Lat. *foris*, without, and *bannitus*, proclaimed, proscribed.] In old European law. Banished; outlawed. *Spelman*. LL. *Longob.* lib. 1, tit. 25, c. 62, cited *ibid*. *Spelman* calls this a Lombardic word.

FORBANNUM. L. Lat. Proscription; banishment. *Spelman*, voc. *Forbannitus*. LL. *Longob.* lib. 1, tit. 25, l. 63, cited *ibid*.

FORBARRER. L. Fr. In old English law. To bar out; to prevent or preclude; to estop.* To bar or deprive forever. *Stat.* 9 Ric. II. c. 2. *Stat.* 6 Hen. VI. c. 4. *Cowell*.

Forbarres; barred, prevented, or estopped. *Britt.* c. 119. *Stat. Glouc.* c. 3. *Litt.* sect. 640.

FORBATUDO, *Forbatudus*. L. Lat.

[from Sax. *fore*, before, and Fr. *batre*, to beat or strike.] In old European law. The first striker; he who struck the first blow, (*primus feriens*.) or offered the first wrong, (*primam inferens injuriam*.) A term applied to one who was slain in a quarrel of his own provoking, and by his own fault; as by one upon whom he made an assault; (*qui vim aut injuriam alteri inferens, culpa sua occiditur*.) *Spelman*.

FORBEARANCE. A holding from proceeding; an abstaining from the enforcement of a right, as the payment of a debt; indulgence by a creditor to a debtor. See 3 *Comstock's R.* 355.

FORCE. L. Fr. and Eng. [L. Lat. *fortia*, *fortia*; Lat. *vis*.] Strength; compulsory power; mere strength or power exercised without law, or contrary to law; violence.*—An offence by which violence is used to persons or things. *West's Symbol.* part 2, tit. *Indictments*, § 65. *Cowell*.

* *Force* is now generally used in a bad sense, to denote *unlawful* force or violence, (*vis injusta*.) *Co. Litt.* 161 b. *Cowell*. Anciently, however, various kinds of force were recognized; as *simple* force, and *violent* force; *violent* force *without arms*, and *violent* force *with arms*, or *armed* force; *lawful* force and *unlawful* force; with many more refined distinctions now obsolete. *Bract.* fol. 162. Bracton defines *force*, (*vis*.) without any qualifying epithet, to be "the onset or pressure of a greater thing which cannot be resisted," (*majoris rei impetus cui resisti non potest*.) *Id. ibid.* The same author gives as an example of *force without violence*, that kind of force which was exerted against a thing *not* at the time in any one's possession, (*sicut in rem vacuum*.) *Id. ibid.* So Britton distinguishes between *force and arms*, and *simple* force *without arms*, giving, as an instance of the latter, *force by a multitude of people*; (*et si y ad force et armes, ou force simple sauns armes, si come par multitude de gentz*.) *Britt.* c. 53. See *Force and arms, Vis*.

FORCE. L. Fr. and Eng. [Lat. *vis*.] Validity; efficacy; power in law to bind or coerce. An obligation or law is said to be "of force," or "in force," so long as compliance with it can be lawfully coerced. The word had the same sense in law French. *Voyde et de nul force*; void and of no force. *Britt.* c. 52. *De ci graund force*; of so great force. *Stat. Mod. Lev. Fines*.

FORCE. L. Fr. [L. Lat. *fortia*.] In old English law. A technical term applied to a species of accessory before the fact. *Stat. Westm.* 1, c. 14. See *Fortia*.

FORCE. In Scotch law. Coercion; duress. *Bell's Dict.*

FORCE AND ARMS. [L. Fr. *force et armes*; L. Lat. *vis et arma*.] A phrase in the old law of trespass and disseisin, importing that the act was committed by *multitude* of people, with *arms* or weapons of offence. Otherwise expressed as *force of arms*, and *force with arms*, and sometimes *armed force*. *Britt.* c. 53. *Litt.* sect. 240. See *Force*. The word *arms* had, in this connection, its full proper sense of military equipment. Thus Britton (*ub. sup.*) speaks of disseisin committed with banner displayed and horses arrayed, (*à banner despleye, ou à cheiaus covertz*.)

The phrase "with force and arms," (*vis et armis*.) was also anciently a necessary phrase in pleading, and is still used in declarations for trespass and in criminal indictments, though with little of its original significance. 2 *Chitt. Pl.* 846, 850. *Wharton's Prec. of Indict.* 5, 9. In indictments it is held to be no longer essential. *Id. ibid.* See *Vi et armis*.

FORCE MAJEURE. Fr. [Lat. *vis major*.] In the law of insurance. Superior or irresistible force. *Kemeryg. Tr. de Ass.* ch. 12.

FORCED SALE. In practice. A sale made at the time, and in the manner prescribed by law, in virtue of execution issued on a judgment already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. *Hemphill, C. J.* 6 *Texas R.* 110.

FORCELET. L. Fr. [L. Lat. *forcelletum*.] A fortress. *Stat. Westm.* 1, c. 17. *Fleta*, lib. 1, c. 20, § 119.

FORCERIUM. L. Lat. In old English law. A strong box, or chest for keeping papers. *Quare quoddam forcerium vel cistam—fregit. Reg. Orig.* 94 b, 95.

FORCHER. L. Fr. In old practice. To divide, in the process of coining; to fourch. *Stat. Westm.* 1, c. 43. See *Fourcher*.

FORCIA. L. Lat. In old English law. Force. *Fleta*, lib. 1, c. 27, § 18. *Town. Pl.* 116. More commonly written *fortis*. (q. v.)

FORCIBLE ENTRY. An entry with

strong hand, or with multitude of people, as distinguished from a peaceable entry. *Stat. 5 Ric. II. c. 8. 2 N. Y. Rev. St. [507.] 418, § 1.*—A violent actual entry into a house or land. *Termes de la Ley. Cowell.*—An offence against the public peace, committed by violently taking possession of lands and tenements with menaces, force and arms, and without the authority of law. *4 Bl. Com. 148. 4 Steph. Com. 280. 2 Chitt. Gen. Pr. 231, 233, et seq. Lewis' U. S. Crim. Law, 274, et seq. United States Digest, Forcible Entry and Detainer.*

FORCIBLE DETAINER. The offence of violently keeping possession of lands and tenements, [either after a peaceable or forcible entry,] with menaces, force and arms, and without the authority of law. *4 Bl. Com. 148. 4 Steph. Com. 280.* See *Forcible entry*, and the authorities *ibid.* To constitute a forcible detainer, there must be actual force, with strong hand, except where the parties stand in the relation of landlord and tenant. *3 A. K. Marshall's (Ky.) R. 1145, [296.]*

FORCLORRER, Foreclorre. L. Fr. [from *for*, out, and *clorre*, to shut.] To shut out, or exclude; to foreclose. *Et forclorra le frere et la soer*; and shall shut out the brother and the sister. *Britt. c. 119.*

Forclos, foreclose; shut out, barred or foreclosed. *Britt. c. 5, 73. Stat. Gloc. c. 3. Forecloses. Stat. Mod. Lev. Fin. 2 Inst. 510.*

FORDA. L. Lat. In old records. A ford or shallow, made by damming or penning up the water. *Cowell.*

FORDAL. Sax. [L. Lat. *fordalia, fordalis*; from Sax. *for*, before, and *dæl*, a part or portion.] In old records. A front piece or head of land; a headland or butt.* *Cowell.*

FORDANNO. [from Germ. *for*, or Sax. *fore*, before, and *dammen*, to assault.] In old European law. He who first assaulted another. *Spelman.*

FORDIKA. L. Lat. In old records. Grass or herbage growing on the edge or bank of dykes or ditches. *Cowell.*

FORE. Sax. Before.

FORE. L. Fr. Out. See *For*.

FORECHEAPUM. L. Lat. [from Sax. *fore*, before, and *ceapan*, to buy.] In old records. Pre-emption. *Blount.*

FORECLOSE. [from L. Fr. *forclorre*, q. v.] To shut out or exclude; to bar. *2 Inst. 298. Stat. 33 Hen. VIII. c. 39.*

In equity practice. To bar an equity of redemption. *1 Steph. Com. 284. 1 Daniell's Chanc. Pr. 262.*

FORECLOSURE. In equity practice. The process of barring the equity of redemption of a mortgagor, by filing a bill for that purpose, called a bill of foreclosure. *2 Barbour's Chanc. Pr. 171, 186. 2 Crabb's Real Prop. 918. 4 Kent's Com. 180.*

FOREFAULT. Sc. In Scotch law. To forfeit; to lose; (Scotticè, to tyne.) *Skene de Verb. Sig. voc. Recognition.*

FOREGIFT. See *Forehand rent*.

FOREHAND RENT. In English law. A kind of premium paid by a tenant on taking a lease. Sometimes called *foregift*, but more usually a *fine*. *1 Crabb's Real Prop. 171, § 155.*

FOREIGN, Forein, Forrein. [from L. Fr. *forein, foreyn, forain*; Lat. *forinsecus*; from *foris*, without, on the outside.] Without or beyond the limits of a particular territory, district or jurisdiction; as a *foreign nation, a foreign state, a foreign county*, (qq. v.)

Belonging without, or to another jurisdiction; as *foreign matter, a foreign answer*, (qq. v.)

Originating or coming from without or abroad; subject to another jurisdiction; as a *foreigner*, (q. v.)

Made, done or transacted without, or in another territory or jurisdiction; as a *foreign assignment, a foreign judgment, a foreign marriage*, (qq. v.)

Operating without, or in another territory or jurisdiction; going abroad; as a *foreign bill of exchange*, (q. v.)

Extrinsic or irrelevant; belonging elsewhere; (L. Fr. *dehors*.)

Extraordinary or *extra*. See *Foreign apposer*.

* * It was argued in *Spratt v. Spratt*, (1 *Peters' R.* 343,) that *foreign* properly signified that which had an *origin* abroad; and the derivation of the word from *foris*, (without,) and *origo*, (origin,) was relied on. But this seems hardly so good an etymology as *foris* and *regnum*, which has also been given. Both these conjectures appear to be based entirely on the presence of the letter *g*, which, however, is a mere variation of spelling *forein*, (as *darreign* was of *darrein*.) the word itself being essentially French. *Foreign* or *forein* (as it is written by Blount) seems clearly derived, by the simple process of contraction, from the

Lat. forinsecus, the signification of which was by no means limited to the idea of origin. See *Forinsecus*.

Foreign, in common speech, has, in most of its applications, the sense of remoteness. But this idea does not necessarily enter into its legal meaning. Hence, in American law, the several states of the Union are, in certain points of view, *foreign states* to each other, though the states to which the term is applied may be immediately adjacent. See *Foreign state*. So each county in a state, considered with reference to the others, is a *foreign county*. See *Foreign county*. And, in old English law, the term was applied to still smaller subdivisions, as a lord's fee; and even to an outside ridge or furrow of land. See *Foreign service*, *Forinsecus*.

FOREIGN ANSWER. [*L. Lat. forinseca responsio*.] In old English practice: An answer which was not triable in the county where it was made. *Stat. 15 Hen. VI. c. 5. Cowell, voc. Foreign*.

FOREIGN OPPOSER, (or OPPOSER.) [*L. Lat. forinsecus oppositor*.] In old English law. An officer in the exchequer whose business was to examine sheriffs' estreats with the record. So called, according to Cowell and Blount, (who write the word *opposer*,) because he *opposed*, that is, questioned or interrogated the sheriff as to every particular sum specified. Lord Coke, however, very distinctly writes the word *opposer*. "*Forinsec' oppositor*, the foreign *opposer*; he doth *oppose* all sheriffs and bailiffs of liberties, of their green wax." 4 *Inst.* 107. See 2 *Vern.* 83. This word may be essentially the same with *controller* (*contra-rotulator*) the radical idea of which was opposition.

From Coke's explanation of the duties of this officer, it may be gathered that he was denominated *foreign* because he dealt with such items as were not within the ordinary accounts of the sheriff; it being the province of the escheator to deal with such matters as were "*within the sheriff's accounts*." *Foreign opposer* may therefore not inaptly be defined, an *extraordinary* or *special controller* or auditor.

FOREIGN ASSIGNMENT. An assignment made in a foreign country, or in another state. 2 *Kent's Com.* 405—408, and notes.

FOREIGN ATTACHMENT. [*L. Lat. attachiamentum forinsecum*.] In English practice. An attachment of the property

of a foreign or absent debtor.* A judicial proceeding peculiar to certain cities and towns in England, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer to an action; and afterwards, upon his continued default, of obtaining the goods or property absolutely, in satisfaction of the demand. *P. Cyclopaedia*. Called *foreign*, because it operates against a *foreign debtor*, or a debtor out of the jurisdiction within which the property is found. See *Foreign*. Cowell defines it "an attachment of a *foreigner's* goods found within a liberty or city, in the hands of a third person, for the satisfaction of some citizen to whom the said *foreigner* oweth money."

The proceedings, as carried on in the Mayor's Court of London, are in the form of an action supposed to be commenced by summons against the debtor, on the return of which, a suggestion is supposed to be made by the plaintiff to the court, that some third person within the city has goods of the defendant in his possession, or owes him debts, by which goods or debts the plaintiff prays that the defendant may be *attached* until he appears to answer the action brought against him. In point of fact, the first proceeding is an affidavit of the debt, made by the plaintiff or creditor, upon which an entry of the supposed action is made in the action book kept in the Mayor's Court office, and then the plaintiff's attorney proceeds immediately against the third party, or *garnishee*, as he is called, by attachment and summons. See the proceedings described at length, in *Magrath v. Hardy*, 4 *Bing. N. C.* 782. The English foreign attachment is founded entirely upon local customs, and is an exception to the general law of the land. See *Drake on Attachment*, chap. 1. *Id.* ch. 18. *Locke on Foreign Attachment*.

In the United States, a similar process has been adopted against the property of absent, non-resident and absconding debtors, a species of which is called in some states, *trustee*, and in others, *garnishee process*. The practice, however, is, in many respects, different from the English, being regulated by the statute and local law of each state. See 2 *Kent's Com.* 401, 403, note. *United States Digest*, Absent and Absconding Debtors. Story, J. 4 *Me-*

son's *R.* 447. *Drake on Attachment*, per tot.

FOREIGN BILL OF EXCHANGE.

A bill of exchange drawn in one state or country, upon a foreign state or country. *Story on Bills*, § 22.

A bill of exchange drawn in one country, upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. *Id. ibid.* A bill of exchange drawn in one of the United States, upon a person residing in another state, is a foreign bill. 2 *Peters' R.* 586. 10 *Id.* 572, 579. 12 *Id.* 54. 3 *Kent's Com.* 94, note.

FOREIGN CORPORATION. A corporation created by or under the laws of another state, government or country.* 2 *N. Y. Rev. Stat.* [459,] 375, § 15.

FOREIGN COUNTY. In practice. Another county in the same kingdom or state; whether remote or adjacent.* *Stat. Westm.* 1, c. 45. "Forrein countie." *Yearb. H.* 10 *Edw.* III. 23. *Keilw.* 67. "A forrain shire." *Brownl. & Golds.* 35. See *Foreign answer*, *Foreign matter*, *Foreign jury*.

FOREIGN DIVORCE. A divorce obtained out of the state or country where the marriage was solemnized. 2 *Kent's Com.* 106, et seq.

FOREIGN ENLISTMENT ACT. The statute 59 *Geo.* III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 *Steph. Com.* 226.

FOREIGN JUDGMENT. A judgment obtained in a foreign court, or in the court of a foreign country.* 2 *Kent's Com.* 118—121, and notes.

FOREIGN JURY. In practice. A jury from another, or foreign county. 1 *Burr. Pr.* 211, 442.

FOREIGN LAW. The law of a foreign country or state. The municipal laws of the respective states of the United States are *foreign* in respect to the sister states. 2 *Wash. (Va.) R.* [282,] 359. The laws of another state are to be proved, like foreign laws. 1 *Rawle's R.* 386. *United States Digest*, Foreign laws.

FOREIGN MATTER. In old practice. Matter triable or done in another country. *Cowell*, voc. *Foreign*.

FOREIGN PLEA. [L. Lat. *forinsecum placitum*.] In old pleading. A plea objecting to a judge as incompetent, because the matter in hand was not within his precinct. *Kitch.* 75. *Stat.* 4 *Hen.* VIII. c. 2.

Stat. 23 *Hen.* VIII. c. 2, 14. *Cowell*, voc. *Foreign*. A plea to the jurisdiction.

FOREIGN PORT. A port exclusively within the sovereignty of a foreign nation. 2 *Gallison's R.* 4, 7. *Id.* 501. *Marshall, C. J.* 1 *Brock. R.* 235, 239. A foreign port or place is a port or place without the United States. 19 *Johns. R.* 375.

FOREIGN SERVICE. [L. Lat. *forinsecum servitium*.] In old English law. The service by which a mesne lord held over of another, without (*foris*) the compass of his own fee. *Bro. Abr.* Tenures, fol. 28, 95, 251. *Kitch.* 209. *Cowell*, voc. *Foreign*.

The service which a tenant performed either to his own lord, or to the lord paramount, out of his fee. Called *foreign*, (*forinsecum*), because it was done and taken without, (*foris*), or besides, (*extra*) the service done to the lord paramount. *Bract.* fol. 36. See *Forinsecus*, *Forinsecum servitium*.

FOREIGN STATE. A state occupying a foreign territory, or not comprised within the limits of another state or nation.* An Indian nation occupying a territory within the acknowledged boundaries of the United States, is not a *foreign state*, in the sense in which that term is used in the constitution of the United States. *Marshall, C. J.* 5 *Peters' R.* 1, 17. See 6 *Id.* 515.

A state governed by local or municipal laws different from those of another state.* *Story on Bills*, § 22. The several states of the American Union are, in certain respects, foreign states to each other. See *Foreign bill of exchange*, *Foreign law*.

FOREIGN VOYAGE. A voyage to some port or place within the territory of a foreign nation. 3 *Kent's Com.* 177, note. 1 *Gallison's R.* 55. The *terminus* of a voyage determines its character; if it be within the limits of foreign jurisdiction, it is a foreign voyage, and not otherwise. 1 *Story's R.* 1.

FOREIGNER. In old English law. A person not an inhabitant of a city. 1 *H. Bl.* 213, note; citing *Harg. Law Tr.* 128. See *Forein*.

FOREIGNER. In American law. An alien; the opposite of citizen. 1 *Peters' R.* 343. A person born in and owing allegiance to a foreign state or country.* A foreigner who becomes a citizen is no longer a foreigner. *Marshall, C. J.* 1 *Peters' R.* 349. See *Alien*.

FOREIN. An old form of *foreign*, (q. v.) *Blount*.

FOREIN, Forrein, Forreine, Foreyn. L. Fr. [from Latin *forinsecus*, q. v.] Foreign; belonging without. A foreigner or stranger. A person not an inhabitant of a city. *Foreins* are distinguished from *gens de la cite*. *Yearb. T. 10 Edw. III. 3. Auribien des foreins come de denizens.* H. 6 Edw. III. 15. A non-resident, as distinguished from *resiant*. M. 11 Hen. VI. 7. *Home forein*; a foreign person. *Stat. Westm. 1, c. 23. Forreine counties.* Id. c. 45. *Et vouch forrein a garranty.* *Stat. Gloc. c. 12. En foreyn*; out of a lord's jurisdiction. *Britt. c. 15.*

FOREJUDGE, ForjUDGE. [L. Fr. *forjurer*, from *for*, out, and *jurer*, to adjudge; L. Lat. *forjudicare*, q. v.] In old English law and practice. To expel from court, for some offence or misconduct. When an officer or attorney of a court was expelled for any offence, or for not appearing to an action by bill filed against him, he was said to be *forejudged the court*. *Cowell. Stat. 2 Hen. IV. c. 8. See 9 East, 424. See Forjudicare.*

To deprive or put out of a thing by the judgment of a court. *See Forjudicare.* To condemn to lose a thing. King John, as Duke of Normandy, was, by King Philip of France, *forjudged* of his duchy. *Hale's Hist. Com. Law, 146.*

To expel or banish. *See Forjudicare.*

FOREJUDGER, Forjudger. [L. Lat. *forjudicatio*.] In English practice. A judgment by which a man is deprived or put out of a thing; a judgment of expulsion or banishment. *See Forjudge.*

FOREMAN. The presiding member of a grand or petty jury, who speaks or answers for the jury.

FORENSIS. Lat. [from *forum*, a court.] In the civil law. Belonging to, or connected with a court; forensic. *Forensis homo*; an advocate; a pleader of causes; one who practices in court. *Calv. Lex.*

FORENSIS. L. Lat. [from Fr. *foraine*.] In old Scotch law. A strange man or stranger; an out-dwelling man; an "un-free-man," who dwells not within burgh. *Skene de Verb. Sign.*

FOREPRISE. *See Forprise, Forsprise.*

FORERA. L. Lat. [from Sax. *fore*, before, or in front.] In old English law. Land lying before, or in front of other land; a foreland;* a headland, (*terra capitalis*.) *Cowell. Spelman.* A piece of land lying

crosswise of another, (*terra transversalis*), and opposing its side to the end, front or head of the other piece. *Spelman. See Headland.*

FORESAID is used in Scotch law, as *aforesaid* is in English, and sometimes in a plural form, *foresaids*. 2 *How. St. Trials*, 715. *Forsaidis* occurs in old Scotch records. "The Loirdis asesouris formidia." 1 *Pitt. Cr. Trials*, part 1, p. 107.

FORESCHOKE, Forchoke. Forsaken. *Cowell.*

FOREST. [L. Lat. *foresta*, *forestia*, *forestum*; from *foris*, or *foras*, without, according to *Spelman*; that is, out land, or outer land, (*pars forastica, seu exterior*), as lying out of the cultivated or inhabited country.] In English law. A large extent or precinct of country, generally waste and woody, belonging to the sovereign, set apart and privileged for the keeping of game for his use and diversion, (*alendis feris regis exposita*;) not enclosed, but distinguished by certain limits and peculiarly protected by certain laws, courts and officers, of its own.* *Spelman, voc. Foresta. Manwood, part 2, c. 1. Termes de la Ley. 2 Steph. Com. 17. 1 Bl. Com. 289. 1 Crabb's Real Prop. 91, § 97. Id. 484, § 624.*—A royal chase, or hunting ground.*

The right or franchise enjoyed by a subject, of having a forest. 2 *Steph. Com. 17. Cra. Jac. 155. 1 Crabb's Real Prop. 484, § 624.* This, however, according to *Spelman*, is an improper use of the word; a forest in the hands of a subject being properly a *chase*. *Spelman, voc. Foresta. 2 Bl. Com. 38. See Chase.*

* * Lord Coke, following the Black Book of the Exchequer, makes the Lat. *foresta*, to be as it were *feresta*, from *ferarum statio*, a station or safe abiding place for wild animals; and the same derivation is essentially adopted by Calvin. *Co. Litt. 233 a. Calv. Lex.* But *Spelman* much more reasonably supposes it to be derived from *foris*, or *foras*, without, as lying without and separate from the cultivated and inhabited country; being indeed abandoned to a state of nature, for the more effectual preservation and increase of the wild animals harbored within its precincts; (*extraneum quiddam, et feris datum*.) *Spelman, voc. Foresta. Tula ferarum mania. Lib. Nig. Scacc. cited ibid.* Hence a forest was deemed to be not of the body of any county. *Spelman* supposes the word

foresta to have been introduced by the Normans. The Danes and Saxons made use of the terms *buc-holt*, (buck-wood,) and *dere-fald*, (deer-fold.) *Spelman, ub. sup.* For a very recent case involving the definition of a forest, see 1 *Welsby, H. & Gordon*, 211.

FOREST COURTS. Certain courts in England, instituted for the government of the king's forests in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or venison, to the vert or greensward, and to the covert in which such deer are lodged. They consist of the courts of attachments, of regard, of swain-mote, and of justice-seat. 3 *Bl. Com.* 71. 3 *Steph. Com.* 439. They are said to be now fallen into absolute disuse. *Id. ibid.* But see the case of *Regina v. Conyers*, 8 *Ad. & Ell.* (N. S.) 981. See *Attachments, Regard, Swain-mote, Justice seat.*

FOREST LAW. A system of law anciently established in England, for the government of the royal forests, and administered by courts and officers of its own. That it existed before the Norman Conquest appears from the laws or constitutions of Canute, which have been preserved; but it was first established with all its oppressive peculiarities by the princes of the Norman line. *Spelman, voc. Foresta.* 2 *Steph. Com.* 18. Its severities and abuses were mitigated by the *Carta de Foresta*, 9 Hen. III. and a variety of subsequent statutes; and since the era of the Revolution it is said to have fallen into total disuse. 2 *Bl. Com.* 415. 3 *Id.* 73. 2 *Steph. Com.* 18, 19. 1 *Reeves' Hist. Eng. Law*, 254, *et seq.* But see 8 *Ad. & Ell.* (N. S.) 981. Manwood is the principal authority in forest law, and was extensively quoted in the case last cited.

FORESTA, Forestis, Forestum, Forasta. L. Lat. In old English law. A forest. *Spelman. Lib. Nig. Scacc.* cited *ibid.* *Cart. de Forest. passim.* See *Forest.* Skene defines *foresta*, a large wood, without dike or closure, which has no water. *De Verb. Sign. voc. Forestarius.*

FORESTAGIUM. L. Lat. [from *foresta*, q. v.] In old English law. A duty or tribute payable to the king's foresters. *Cowell. Blount. Chart.* 18 *Edw. I.* cited *ibid.*

FORESTALL, Forstall, Forestal, Forstall. Sax. [from *fore*, before, or *fare*, a way, and *stal*, or *stal*, a standing or stop-

ping; L. Lat. *forstallare.*] In English law. To obstruct or stop up a way, (*viam præpedire*;) to stop the passage of a person or thing on the highway; to intercept on the road. *Spelman, voc. Forstall.* 3 *Bl. Com.* 170. *Co. Litt.* 161 b. See *Forstalling.*

FORESTALLER. [L. Lat. *forstallatio.*] In English law. The obstruction of a way or road, or the hindering a person or thing from passing. The besetting of a way by a tenant, in order to prevent his lessor from coming on the premises. 3 *Bl. Com.* 170. The lying between a deer and the forest, in the way he was to return, so as to stop him from returning. *Crompt. Jurisd.* 153.

FORESTALLER, Forstaller. [L. Lat. *forstallator, forstallarius.*] One who forstalls, or is guilty of the offence of forstalling. See *Forstalling, Forstallarius.*

FORESTALLING. [L. Lat. *forstallatio.*] The obstructing of a way; the interception of a person or thing on a road. See *Forstaller, Forstall.*

Forstalling the market is the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 *Bl. Com.* 158. This was formerly an indictable offence in England, but is now abolished by statute 7 & 8 Vict. c. 24. 4 *Steph. Com.* 291, note.

FORESTARIUS. L. Lat. [from *foresta*, a forest.] In old English law. A forester; an officer appointed to take care of a wood or forest. *Cart. de Forest.* c. 7, 8, 14. Where a tenant in dower had committed waste in a wood, there was an old writ *de forestario apponendo*, which lay for the appointment of a forester to take charge of the wood, and see that no further waste was done. *Bract.* fol. 316.

In Scotch law. A forester or keeper of woods, to whom, by reason of his office, pertains the bark and the hewn branches. And when he rides through the forest, he may take a tree as high as his own head. *Skene de Verb. Sign.*

FORESTER. [L. Lat. *forestarius.*] In English law. A sworn officer of the forest, appointed by the king's letters patent, to walk the forest both early and late, watching both the vert and the venison, attaching and preventing all trespasses

against them within his bailiwick or walk.
Cowell. Blount.

FORETHOUGHT FELONY. In Scotch law. Murder committed in consequence of a previous design. *Bell's Dict.*

FOREVER. [Lat. in perpetuum.] This word in a devise of land will pass a fee. *Co. Litt.* 9 b. See 11 *East*, 518.

FORFACERE. L. Lat. To forfeit. *Spelman*, voc. *Forisfacere*. See *Forisfacere*.

FORFACTUM. See *Forisfactum*, *Forfactus*.

FORFACTURA. L. Lat. A forfeiture. *Spelman*, voc. *Forisfacere*. See *Forisfactura*.

FORFACTUS, Forfactum. L. Lat. [L. Fr. *forfait*.] In old European law. Forfeited. *De rebus forfactis quæ per diversas comitatus sunt, volumus ut ad palatium pertineant, transacto anno et die*; concerning things forfeited, which are in different counties, we will that they belong to the palace, [or fisc, that is, that they be confiscated,] after a year and a day. *LL. Longobard.* lib. 3, tit. 33. *Spelman*, voc. *Forisfacere*. See *Forisfactus*.

FORFAIRE. L. Fr. [from Lat. *forisfacere*, q. v.] In old English law. To forfeit. *Forface*; shall forfeit. *Britt.* c. 12. *Forfist*; forfeited. *Et nisi forfist ele dower*; and so she forfeited dower. *Id.* c. 110. *Forfait, forfait*; forfeited. *Id.* *ibid.* *Kelham*.

FORFANG, Forfeng, Foresfeng. Sax. [from *fore*, before, and *sangen*, to take; L. Lat. *antecapio, preventivo, prior prisæ*.] In Saxon law. A previous taking; a taking of provisions from any person in fairs or markets, before the king's purveyors were served with necessities for the sovereign. *Spelman*. *LL. Inæ*, cited *ibid.* *Cowell. Flota*, lib. 1, c. 47, § 15.

FORFEIT. [L. Fr. *forfait, forfait*; L. Lat. *forfactum, forisfactum*.] Lost by one's fault or misconduct; forfeited. See *To Forfeit*.

To **FORFEIT**. [from L. Fr. *forfaire*; O. Sc. *forfault*; L. Lat. *forisfacere, forfacere*; from *foris*, without, and *facere*, to make.] To lose what belongs to one by some fault, misconduct or crime, (*rem suam ex delicto amittere*;) to make it foreign to one's self, (*sibi extraneum facere*), or put one's self out of it; to lose it to another, (*rem culpa abdicere, alterique abdicare*;) to transfer involuntarily, as the consequence of one's own wrongful act, and by operation of law.* *Spelman*, voc.

Forisfacere. Forfeiture involves the idea not only of loss by the delinquent party, but of transfer or surrender to some other, whether it be an individual or the state. Thus, lands are forfeited by one individual to another, as by a wrongful alienation, by breach of some condition, &c. In the feudal law, they were forfeited to the lord by the misconduct of the tenant. See *Forfeiture*. Lands and goods are forfeited to the state as the consequence of crime; office is forfeited to the state as the consequence of misconduct, and life itself is sometimes forfeited to the law, as the penalty of its violation.

To incur a penalty, (*multum incurrere*.) *Spelman*, voc. *Forisfacere*. To become liable to the payment of a sum of money, as the consequence of a certain act. Penal statutes frequently provide that a party found guilty of violating their provisions shall forfeit a sum of money, or article of property.

To confiscate. *Id.* To forfeit and to confiscate, forfeited and confiscated, have sometimes been used as synonymous terms. Thus, in Virginia, a law or statute is spoken of as "forfeiting lands." 10 *Grattan's R.* 402, 405. There seems, however, to be an obvious distinction between them, though it has been differently expressed by different writers. According to Staundford, goods are properly said to be forfeited where they have a known owner, who has committed some offence whereby he loses them; and confiscated when they are disavowed by an offender, as not his own, nor claimed by any. *Staundf. Pl. Cor.* fol. 186. See another distinction in *Fisck's Law*, b. 3, c. 17. *Cowell* makes forfeiture to be the more general term, and confiscation to be the particular forfeiture to the king's exchequer. The true distinction, however, appears to be, that forfeiture is the act of the individual, confiscation that of the state. The individual forfeits his property, the state confiscates it as forfeited. That the terms are not convertible is shown in the absurdity of saying that the state forfeits, or the individual confiscates. The property is forfeited the instant the illegal or wrongful act of which forfeiture is declared to be the punishment, is committed; but it is not confiscated, that is, it does not vest in the government, until formally claimed or taken possession of. 1 *Story's R.* 109. But see 10 *Grattan's R.* 400. See *Confiscate*.

FORFEITURE. [L. Fr. *forfaicture*, from *forfaire*; L. Lat. *forisfactura*, *forfactura*.] The loss of what belongs to one, by some fault, misconduct or transgression of law. An involuntary or compulsory transfer or surrender, consequent upon one's own unlawful or wrongful act.* See *To Forfeit*. Of this the following are the principal varieties:

The loss of land, or an estate in land, by one individual to another, as a punishment for some illegal act or negligence in relation to it; as for some alienation contrary to law, or the breach of some condition. 2 *Bl. Com.* 267, 274, 284. 1 *Steph. Com.* 421. 4 *Kent's Com.* 123. 2 *Crabb's Real Prop.* 89, § 1061, (Am. ed. note.)

The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 *Steph. Com.* 166.

The loss of goods or chattels, as a punishment for some crime or misdemeanour in the party forfeiting, and as a compensation for the offence and injury committed against him to whom they are forfeited. 2 *Bl. Com.* 420.

The loss of lands and goods to the state, as the consequence of crime. 4 *Bl. Com.* 381, 387. 4 *Steph. Com.* 447, 452. 2 *Kent's Com.* 385. 4 *Id.* 426.

The loss of a certain sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law.

The loss of office, by abuser, non-user, or refusal to exercise it. 1 *Crabb's Real Prop.* 456, § 576, *et seq.*

The loss of life, as the consequence of the commission of some capital crime.

For the American law of forfeiture in general, see the statutes of the several states, and of the United States, and see *United States Digest*, Forfeiture.

FORFEITURE. A thing or sum of money forfeited. Something imposed as a punishment for an offence or delinquency. Phelan, J. 21 *Alabama R.* 672. And see 10 *Grattan's R.* 700. The word in this sense is frequently associated with the word *penalty*. 2 *N. Y. Rev. St.* [480,] 394.

FORFENG. Sax. [from *fore*, before, and *fangen*, to take.] In old English law. An acquittance for a previous taking. *Fleta*, lib. 1, c. 47, § 15.

FORGABULUM. L. Lat. In old records. Forgavel; a quit rent. *Cowell*. See *Forgavel*.

FORGAVEL. Sax. [from *fore*, before,

and *gafel*, rent.] In old English law. A small reserved rent in money; a quit rent. *Cowell*, voc. *Forgabulum*.

FORGE. [L. Fr. *fauzer*, *fauuser*, *faucher*, *forger*; L. Lat. *falsare*, *fabricare*.] In criminal law. To make or fabricate a thing in imitation of another, with a view to deceive and defraud; to make falsely; to counterfeit.* To forge (a metaphorical expression, borrowed from the occupation of the smith,) means, properly speaking, no more than to *make* or *form*, but in our law it is always taken in an evil sense. 2 *East's P. C.* 852, c. 19, § 1. The French *fauzer* or *fauuser*, however, (from *fauz*, false,) which is a term employed by Britton, always radically imported a *false* making, and may have been the origin of the English word, instead of *forger*, to fashion, (q. v.)

To forge and *to counterfeit* are constantly used both in ancient and modern law, as synonymous terms. Thus, *de fauseours qui ont nostre money countrefait*; of forgers who have counterfeited our money. *Britt.* c. 4. See *Forgery*. The former, however, is usually applied to *writing* or written instruments, the latter to other subjects of imitation, especially money. Thus, we say "a *forged* deed," "a *forged* check," "a *forged* signature," "a *forged* endorsement;" and "a *counterfeit* coin," "a *counterfeit* bank note."

FORGEMENT. L. Fr. *Forgery*. *Yearb.* M. 10 Hen. VI. 82.

FORGER. L. Fr. To frame or fashion; to contrive; to fabricate; to forge. *Yearb.* T. 4 Hen. VI. 4. *L. Fr. Dict.* *Kelham*. *Brief de forger de faux faits*; writ for forging false deeds. *Yearb.* M. 19 Hen. VI. 52. This word is commonly supposed to be the origin of the English *forge*, (q. v.)

FORGERY. [L. Fr. *fausinerie*, *forgerment*; Lat. *crimen falsi*.] In criminal law. The fraudulent making or alteration of a writing, to the prejudice of another's right. 4 *Bl. Com.* 247.—A false making, [which includes every alteration of, or addition to a true instrument;] a making, *malò animo*, of any written instrument, for the purpose of fraud and deceit. 2 *East's P. C.* 852, c. 19, § 1. Mr. East says of this definition, that it results from all the authorities, ancient and modern, taken together. *Id. ibid.* See 2 *Russell on Crimes*, 318. *Wharton's Am. Crim. Law*, § 1418.

The making a thing in imitation of

another thing, with a view to deceive and defraud; such as the imitation of the signature, stamp, brand, or mark of another, the imitation of a seal. But this is more commonly termed *counterfeiting*.

The thing itself, so falsely made, imitated or forged; especially a forged writing. A forged signature is frequently said to be "a *forgery*." For the American law of forgery, see 2 *Russell on Crimes*, (Am. ed. 1850,) 318, notes. *United States Digest*, Forgery and Counterfeiting. *Wharton's Am. Crim. Law*, §§ 1296—1418. *Lewis' Crim. Law*, 290—332.

FORGERY. In the law of evidence. False making; fabrication. The production of false appearances by means of physical objects. The employment or arrangement of physical objects and appearances for the purpose of deceiving or misleading the senses or conclusions of observers. *Burr. Circ. Ev.* 131, 420. 3 *Benth. Jud. Ev.* 49. *Best on Pres.* § 220, et seq. See *Fabrication*.

FORGIA. L. Lat. In old records. A forge; a smith's forge. *Cowell*.

A furnace for melting ore. *Fleta*, lib. 2, c. 41, § 8.

FORHERDA. L. Lat. In old records. A herdland, headland or foreland. *Cowell*.

FORIDISPUTATIONES. Lat. In the civil law. Discussions or arguments before a court. 1 *Ken's Com.* 530.

FORINSECUS, Forinsecum. Lat. [from *foris*, without.] In old English law. Outward; without; external; extrinsic; forinsic; foreign; extraordinary. *Selio forinsecus*; an outside ridge or furrow. *Kennett's Gloss. Cowell. Pastura forinseca*; foreign pasture. *Fleta*, lib. 2, c. 71, § 4. *Forinsecum servitium*; forinsic, foreign, or extraordinary service. *Bract. fol.* 36. *Fleta*, lib. 3, c. 14, § 7. See *Foreign service, Forinsic*.

Forinsecus; a foreigner, one from another jurisdiction. *Fleta*, lib. 2, c. 55, § 4. *Forinseci tenentes*; foreign tenants, as distinguished from a lord's own tenants. *Stat. Westm.* 2, c. 46. *Marescallus forinsecus*; the foreign marshal. *Fleta*, lib. 2, c. 4.

FORINSIC. [L. Lat. *forinsecus*, q. v.] In old English law. Outward; without; foreign; extraordinary. *Forinsic* service, was the payment of aid, scutage and other extraordinary burdens of military service, and was the opposite of *intrinsic* service. 1 *Reeves' Hist. Eng. Law*, 278. See 3 *How. St. Trials*, 866.

FORIS. Lat. Abroad; out of doors; on the outside of a place; without; extrinsic.

FORISBANNITUS. See *Forbannitus*.

FORISFACERE, Forfacere. L. Lat. [from *foris*, without, and *facere*, to make.] In old English law. To forfeit; to lose what belonged to one by some fault or crime; to make it foreign to one's self, (*sibi extraneum facere*.) *Spelman*. See *To Forfeit. Forisfacit patriam et regnum, et exul efficitur*; he forfeits country and kingdom, and is made an exile. *Bract. fol.* 128 b. *Forisfacit amicos*; he forfeits friends. *Id. ibid. Forisfacit utlagatus omnia quæ pacis sunt*; the outlaw forfeits all the privileges of a state of peace. *Id. ibid. Forisfacit omnia quæ juris sunt*; he forfeits all his lawful rights. *Id. fol.* 129.

To incur a penalty; to confiscate. *Spelman*.

To commit, or be guilty of an offence; to transgress a law; to do an injury. *Spelman. LL. Edw. Conf. c. 32, cited ibid.*—To do a thing against or without law or custom, (*extra legem seu consuetudinem facere*.) *Co. Litt.* 59 a.

FORISFACTUM, Forfactum. L. Lat. [from *forisfacere*, (q. v.); L. Fr. *forfait, forfait*.] In old English law. Forfeit; forfeited. *Bona forisfacta*; forfeited goods; forfeitures. 1 *Bl. Com.* 299. See *Forfactus*.

A crime. *Si quispiam proposcerit regis misericordiam pro forisfacto suo*; if any one pray the king's mercy for his crime. *LL. Edw. Conf. c. 18. Spelman, voc. Forisfacere*.

In old Scotch law. An amercement; an unlaw. *Skene de Verb. Sign.*

FORISFACTUS. L. Lat. [from *forisfacere*, q. v.] In old European law. Forfeited. See *Forisfactum*.

One who has forfeited his life, as being found guilty of a capital offence. *De vis forisfactum interficere*; to slay one who had forfeited his life. *LL. Ripuar. tit.* 77. *Spelman, voc. Forisfacere*.

FORISFACTURA, Forfactura. L. Lat. [from *forisfacere*, (q. v.); L. Fr. *forfaiture*.] In old English law. Forfeiture; the losing one's property or life, as the consequence of some fault, misconduct or crime. *Spelman, voc. Forisfacere. Bona forisfactura*; forfeiture of goods. *Fleta*, lib. 2, c. 65, § 8. See *Forfeiture*.

A crime, offence, transgression or in-

jury by which one loses property or life. *LL. Edw. Conf. c. 32. Spelman, ub. sup.*

A mulct, fine or pecuniary punishment. *LL. Edw. Conf. c. 10.* A were or weregild. *Id. c. 36.* The thing itself, lost or forfeited.* *Forisfactura plena*; a full forfeiture, (*Sax. fulwite*;) the whole of a penalty without diminution, or the forfeiture of all that a man had. *Spelman, ub. sup. Manwood, c. 9.*

FORISFAMILIARE. L. Lat. [from *foris*, without, and *familia*, a family.] In old English and Scotch law. Literally, to put out of a family, (*foris familiam ponere*.) To portion off a son, so that he could have no further claim upon his father. *Glanv. lib. 7, c. 3. Reg. Maj. lib. 2, c. porro, 33, § 8.*

To emancipate, or free from paternal authority. See *Forisfamiliatus*.

FORISFAMILIATED. [from *forisfamiliare*, q. v.] In old English law. Portioned off. A son was said to be forisfamiliated, (*forisfamiliari*), if his father assigned him part of his land, and gave him seisin thereof, and did this at the request, or with the free consent of the son himself, who expressed himself satisfied with such portion. *Glanv. lib. 7, c. 3. Reg. Maj. lib. 2, c. porro, 33, § 8. 1 Reeves' Hist. Eng. Law, 42, 110. See Forisfamiliare.*

FORISFAMILIATUS. L. Lat. [from *forisfamiliare*, q. v.] In old English law. Put out of a family; portioned off; emancipated; forisfamiliated. *Bract. fol. 64.*

FORISJUDICARE. L. Lat. [from *foris*, without, and *judicare*, to judge.] In old English law. To deprive or put out of a thing by the judgment of a court; to forjudge. *In prædicta curia nostra foris-judicatur de custodia illa*; in our said court he is forjudged of that wardship. *Bract. fol. 256 b.*

FORISJUDICATIO. L. Lat. [from *forisjudicare*, q. v.] In old English law. Forjudgment; forjudger. *Co. Litt. 100 b. Towns. Pl. 116.* Called by Fleta, *abjudicatio*, (q. v.)

FORISJUDICATUS. L. Lat. [from *forisjudicare*, q. v.] In old English law. Deprived or put out of a thing by the judgment of a court; forjudged. *Co. Litt. 100 b. Forisjudicatus est de eadem custodia. Bract. fol. 256 b.* The same as *abjudicatus. Id. ibid.*

FORISJURARE. L. Lat. [from *foris*, out, and *jurare*, to swear.] In old English law. To forswear; to renounce or relin-

quish by or under oath, (*rem negativæ de-jurare*;) to abjure. *Spelman. Provinciam forisjuraret*; he shall forswear the county; that is, he shall swear that he will not return. *LL. Edw. Conf. c. 6. Crabb's Hist. Eng. Law, 43, ch. 4.* This, when applied to the kingdom, was afterwards called *abjuring the realm. Id. ibid.*

FORISTEL. The same as *Forestal*, *Forstal*, and *Forestall*. Used in Domesday Book. *Spelman, voc. Forstall.*

FORJUDGER. See *Forejudger*.

FORJUDGMENT. See *Abjudicatio, Forisjudicatio*.

FORJUDICARE, Forisjudicare. L. Lat. [from *foris*, without, and *judicare*, to judge; L. Fr. *forjurer*.] In old European law. To deprive or put out of a thing by the judgment of a court. *Spelman. See Forisjudicare.*

To expel, or put out of court; (*foris judicium ponere*.) See *Forejudge*.

To expel or banish; to proclaim one an outlaw. *Forjudicari bannitus debet per justitiarium, qui bannitionis et forjudicationis pœnam edixit. Const. Sic. lib. 2, tit. 3. Spelman.*

FORJUDICATUS. L. Lat. [from *forjudicare*, q. v.] In old European law. Proscribed; outlawed; denied all access to the courts, (*foris omnem aditum judicii constitutus*.) *Spelman, voc. Forjudicare. Const. Neap. Fred. Imp. lib. 2, tit. 3.*

FORJUGER. L. Fr. In old English law. To forjudge, or expel. *Il perde soun office, et soit forjuge la court*; he shall lose his office, and be forjudged the court. *Stat. 2 Hen. IV. c. 8.*

To deprive of; to condemn; to lose. *Forjuges de franchise ley*; forjudged of their frank-law. *Britt. c. 52.*

FORJURER. L. Fr. In old English law. To forswear; to abjure. *Forjurer royaume*; to abjure the realm. *Britt. c. 1, 16. Stat. Westm. 1, c. 15, 20.*

FORLANDUM, Forlanda. L. Lat. In old records. Land extending beyond, or lying before other land; a foreland. *De forlando quod jacet ante terram ecclesie. 2 Mon. Angl. fol. 332. Blount.*

Land bordering or lying outward. *Cowell.* An extra allowance of land; an allowance in meting and bounding, otherwise called *freebord. Id.*

FORMA. Lat. [L. Fr. *forme, fourme*.] Form; the prescribed form of judicial proceedings. *Forma et figura judicii*; the form and shape of judgment or judicial action. *3 Bl. Com. 271.*

A form prescribed by statute. According to Lord Coke, there are two manner of forma, *forma verbalis*, (verbal form) and *forma legalis*, (legal form.) *Forma verbalis* stands upon the letters and syllables of the act; *forma legalis* stands upon the substance of the thing to be done, and upon the sense of the statute. 10 Co. 100 a.

Forma datæ. Form gives being. Called "the old physical maxim." Lord Henley, C. 2 *Eden*, 99.

Forma legalis forma essentialis. Legal form is essential form. 10 Co. 100.

Forma non observata, infertur annullatio actus. Where form is not observed, a nullity of the act is inferred. 12 Co. 7. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity. *Best on Evid.* Introd. § 59.

FORMA PAUPERIS. See *In forma pauperie*.

FORMATA. L. Lat. In canon law. Canonical letters. *Spelman*.

FORMATA BREVIA. L. Lat. Formed writs; writs of form. See *Brevia formata*.

FORME, Fourme. L. Fr. Form. *Forme de don*; the form of the gift. *Britt.* c. 119. *Fourme de don.* *Id. ibid.*

FORMED ACTION. An action for which a set form of words is prescribed, which must be strictly adhered to. 10 *Mod.* 140, 141.

FORMEDON, Formdon. L. Fr. [contracted from *forme de don*; L. Lat. *forma donationis*; the form of the gift.] In old English practice. An action, in the nature of a writ of right, given by the statute Westm. 2, (13 Edw. I.) c. 1, as the peculiar remedy of a tenant in tail, in case of a discontinuance of the estate tail; and therefore called his writ of right. 3 *Bl. Com.* 191. Called *formedon*, because the writ comprehended the *form of the gift*. Co. *Litt.* 326 b. It was of three kinds, in the *descender*, in the *remainder*, and in the *reverter*. See *infra*.

Writs of formedon were specific remedies to carry into effect the statute *de donis*, which provided *quod voluntas donatoris, secundum formam in charta doni sui manifeste expressam, de cætero observetur*; that the will of the donor, according to his form clearly expressed in the charter of his gift, shall in future be observed; [their object, in other words, being to enforce the gift in tail according to its form.] 2 *Reeves' Hist. Eng. Law*, 320. 3 *Id.* 41. They

were abolished in England, with other real actions, by statute 3 and 4 Will. IV. c. 27, § 36. 3 *Steph. Com.* 489, note.

FORMEDON IN THE DESCENDER.

[L. Fr. *formedon en le descender*; L. Lat. *forma donationis in le descendere*.] A writ of formedon which lay where a gift in tail was made, and the tenant in tail aliened the lands entailed, or was disseised of them, and died; in this case, the heir in tail was entitled to this writ, to recover these lands so given in tail, against him who was the actual tenant of the freehold. 3 *Bl. Com.* 192. *F. N. B.* 211 L. 212. *Roscoe's Real Act.* 43, 54. *Litt.* sect. 595. *Reg. Orig.* 238 b. The form in the Register recites that the premises claimed ought to *descend* to the demandant *per formam donationis*, (by the form of the gift.) *Reg. Orig. ub. sup.*

FORMEDON IN THE REMAINDER.

[L. Fr. *formedon en le remainder*; L. Lat. *forma donationis in le remanere*.] A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 *Bl. Com.* 192. *F. N. B.* 217. *Roscoe's Real Act.* 57. *Reg. Orig.* 243. *Litt.* sect. 597.

FORMEDON IN THE REVERTER.

[L. Fr. *formedon en le revertir*; L. Lat. *forma donationis in le reverti*.] A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee, or his heirs without issue of his body, the reversion fell in upon the donor, his heirs, or assigns; in such case, the reversioner had this writ to recover the lands. 3 *Bl. Com.* 192. *F. N. B.* 219 E. *Roscoe's Real Actions*, 59. *Reg. Orig.* 242. *Litt.* sect. 596.

FORMELLA. L. Lat. In old English law. A weight of lead, described in the statute of weights and measures, 51 Hen. III. as containing six stone, all but two pounds. *Spelman. Cowell*. It seems to have been the same with *formellus*, (q. v.)

FORMER RECOVERY. A recovery in a former action. See *Res judicata*.

FORMIDO PERICULI. Lat. Fear of danger. 1 *Kent's Com.* 23. *Huber de Jur. Civ. lib.* 3, c. 7, sec. 4.

FORMULA. Lat. [dimin. of *forma*, s

form.] In practice. A form of words used in judicial proceedings, generally written, always consisting of the same parts, and expressed in precisely the same language, except where variation is necessary to accommodate it to a particular case. The writs, pleadings and records of the common law system of practice furnish the best examples of written formulæ.

In the civil law. An action. *Calv. Lex.*

FORMULARIES. [L. Lat. *formularia*, from *forma*, a form.] Collections of formulæ, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Of these, the formulary of Marculphus is the most curious. *Butler's Co. Litt.* Note 77, lib. 3. *Butler's Hor. Jur.* 87, 88.

FORNAGIUM. See *Furnagium*.

FORNO. Span. [from Lat. *furnus*.] In Spanish law. An oven. *Las Partidas*, part 3, tit. 32, l. 18.

FOROS. Span. In Spanish law. Emphyteutic rents. *Schmidt's Civ. Law*, 309.

FORPRIS. L. Fr. Except. *Britt.* c. 5, 34.

FORPRISA, Forprisum. L. Lat. Forprise, (q. v.)

FORPRISE, Foreprise, Forsprise. L. Fr. and Eng. [from Fr. *for*, out, and *prise*, a taking; L. Lat. *forprisa, forprisum*.] In old English law. An exception, or taking out; a reservation; excepted; reserved; excepting. A term formerly used in conveyances and leases, in which "*excepted and foreprised*" was an usual expression. *Cowell. Blount. Old deed, ibid.* See *Forsprise*. Written *horsprise* in the *Stat. Exon.* 14 Edw. I.; a form not explained by either Spelman, Cowell or Blount, but readily accounted for by the circumstance of *f* and *h* being convertible letters. See *Hors, Horca, Hurto*.

FORREIN. See *Forein*.

FORS. L. Fr. [from Lat. *foris*.] Out. *Kelham*.

FORS, Force. L. Fr. Force. *Amys coiller et fors*; to collect friends and force. *Britt.* c. 44.

FORSCHET. [from Sax. *for*, before, and *scæt*, a part or portion; L. Lat. *for-scheta*.] In old records. The outer or forepart of a furlong; the skirt, or slip, or small piece that lay next the highway. *Kennett's Par. Ant.* 531, 535. *Cowell*.

FORSOKNE. Sax. In old English

law. The liberty of having a view of frank-pledge. *Fleta*, lib. 1, c. 47, § 11. See *Frithsocne*.

FORSPEAKER. An attorney or advocate in a cause. *Blount. Whishaw*.

FORSPRISE, Forspris. L. Fr. Except. *Litt.* sect. 19. *Kelham*.

FORSQUE, Forke, Furk. L. Fr. But; only. *Litt.* sect. 1, 20. *Britt.* c. 26. *Kelham*.

FORSTAL, Forestal, Forstall; in Domesday, *Foristel, Faristel.* Sax. [from *fore*, before, or *fare*, a way, and *stal*, or *stæl*, a standing; L. Lat. *forstallatio, forstallamentum*.] In old English law. A standing before, or stopping; a stopping of the way, (*via obstructio*;) a stopping or intercepting on the road; forstalment, forstaller, or forestalling, (qq. v.) The stopping of a deer broken out of the forest, from returning home again, or lying between him and the forest, in the way he was to return. *Crompt. Jur.* fol. 153. (*Impedimentum transitus et fugæ averiorum*.) *Fleta*, lib. 1, c. 47, § 19. The stopping or assaulting of a person on the highway. *Plac. Parl.* 18 Edw. I. The stopping of merchandise on its way to market. See *Forestalling*.

FORSTALER. L. Fr. To stop; to obstruct; to forestall. *Litt.* sect. 240.

FORSTALL. See *Forstal, Forestal*.

FORSTALLARE. L. Lat. In old English law. To stop a way; to stop on the way; to forestall. *Spelman*.

Forstallarius; (in Domesday, *Foristellararius*.) A forestaller. *Stat.* 13 Edw. I. *Reg. Orig.* 271 b. *Spelman*, voc. *Forstallator*.

Forstallator, Forstellator. A forestaller. *Spelman. Reg. Orig.* 279 b.

Forstallamentum. A forestalment, or forestalling. *Reg. Orig.* 271 b.

Forstallatio. A forestalling.

FORSTALLER, Forstallour. L. Fr. A forestaller. *Britt.* c. 20, 30.

FORSTALMENT. [L. Lat. *forstallamentum*.] An obstruction or stopping of a way; (*obstructio via, impedimentum transitus*.) *Co. Litt.* 161 b. *Fleta*, lib. 1, c. 47, § 19.

FORSWEAR. [L. Lat. *forisjurare*.] To abjure, or renounce by oath. See *Forisjurare*.

To swear falsely. But the word, in this sense, does not in itself import perjury. *Tompkins, J. 2 Johns. R.* 10, 11. *Cro. Jac.* 190, 436.

PORTALITIUM. L. Lat. In old Scotch law. A fortalice; a castle. Properly a house or tower which has a battlement ("anc batelment, an barmekin") or a ditch or moat, ("anc fossie") about it. Lord Fleming *contrair* James Ross, 7th Feb. 1566. *Skene de Verb. Sign.*

FORTESCUE. The author of a celebrated treatise on English law, written in Latin, in the reign of Henry VI. under the title of *De Laudibus Legum Angliæ*. Sir John Fortescue, who had been some time Chief Justice of the King's Bench, is said to have written this work while enduring an exile with the Prince of Wales, and others of the Lancastrian party in France. Sir John was then made chancellor, and in that character he supposes himself holding a conversation with the young prince, on the nature and excellence of the laws of England, compared with the civil law, and the laws of other countries. 4 *Reeves' Hist. Eng. Law*, 119, 113. *Crobb's Hist.* 494, (Am. ed.) 1 *Kent's Com.* 501, 502.

FORTHCOMING, process or decree of. In Scotch law. A decree and process following the process of arrestment, by which the creditor is entitled to demand the sum arrested to be applied for payment of the debt upon which the arrest and forthcoming proceeded. 2 *Kames' Equity*, 177, 178. —The action by which the arrestment is made effectual. *Bell's Dict.* See *Arrestment*.

FORTHCOMING BOND. In American practice. A bond to the sheriff conditioned to deliver property levied on, when demanded. 2 *Wash. (Va.) R.* [189.] 243. 11 *Grattan's R.* 522. 8 *Id.* 179, 560.

FORTHWITH. In practice. A term sometimes used in rules and other proceedings; which, according to Mr. Chitty, seems to import that the requisite act shall be performed as soon as, by reasonable exertion confined to that object, it might be; and which must consequently vary according to the circumstances of each particular case. 3 *Chitt. Gen. Pr.* 112. Recently held to mean "within a reasonable time." 36 *Eng. Law & Eq. R.* 358. See *Immediately, Statim*.

FORTIA, Forcia. L. Lat. In old European law. Force, usually of an unlawful character; (*vis plerumque injusta*.) *Spelman*. The word occurs in this sense in the laws of the Bavarians and Ripuarians. L.

Boior. tit. 2, c. 10, § 1. L. Ripuar. tit. 11, § 3, cited ibid.

In old English law. Force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counselling in any way, or commanding the act to be done. *Bract. fol. 138, 138 b.* Thus one might be appealed, that is, accused, of the force, (*appellatus de fortia*), and another of the fact, or act, (*appellatus de facto*.) *Id. fol. 127 b, 128, 138 b, 139. Ubi factum, ibi poterit esse forcia quandoque, sed nunquam forcia sine facto. Id. fol. 128.* According to Lord Coke, *fortia* was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 *Inst.* 182.

FORTIA FRISCA. L. Lat. In old English law. Fresh force. See *Fresh force*.

FORTIOR. Lat. Stronger. A term applied, in the law of evidence, to that species of presumption arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party. *Huberus Præf. Jur. Cr. lib. 22, tit. 3, n. 4, 16. Burr. Circ. Evid. 64, 66.* See *Fortis*.

FORTIS. Lat. Strong. *Fortis et sana;* strong and sound; staunch and strong; as a vessel. *Towne. Pl.* 227.

Powerful or effective; of weight, force or effect.

Fortior. Stronger, more effectual. *Fortior et potentior est dispositio legis quam hominis.* The disposition of the law is of greater force and effect than that of man. *Co. Litt.* 234 a. *Shep. Touch.* 302. 15 *East's R.* 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. *Broom's Max.* 309, [545.]

Fortissimum. Strongest; of the greatest force, or weight. *Argumentum ab auctoritate est fortissimum in lege.* The argument from authority is of the greatest force in law. *Co. Litt.* 254 a.

FORTUIT. Fr. [from Lat. *fortuitus*, q. v.] Accidental. See *Cas fortuit*.

FORTUITOUS. [from Lat. *fortuitus*, q. v.] Accidental.

FORTUITOUS COLLISION. [Fr. *abordage fortuit*.] In maritime law. The accidental running foul of vessels. 14 *Peters' R.* 112.

FORTUITUS. Lat. [from *fora*, chance.] In the civil law. Accidental. *Fortuitus casus*; a fortuitous event; an accident. *Inst.* 3. 15. 2. See *Cases fortuitus*.

FORTUNA. Lat. Fortune; chance. *Fortunam faciant iudicem, ut quilibet habeat partem illam quæ per sortem ei acciderit*; they shall make fortune or chance the judge, that each one may have that part which shall fall to him by lot. *Bract.* fol. 75 b.

FORUM. L. Lat. A court, or judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. *Story*, J. 3 *Story's R.* 347. So called from the Roman *forum*, where the courts were held. *Lex fori*; the law of the place where a remedy is sought, or action instituted. 2 *Kent's Com.* 462, 463, and notes. See 3 *Bl. Com.* 436. *Story's Conf. of Laws*, § 325 h, 325 k. *Story*, J. 2 *Gallison's R.* 440.

FORUM CONSCIENTIÆ. L. Lat. The forum or tribunal of conscience. See *In foro conscientie*.

FORUM CONTENTIOSUM. L. Lat. A contentious forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 *Bl. Com.* 211.

FORUM CONTRACTUS. L. Lat. The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 *Kent's Com.* 463.

FORUM DOMESTICUM. L. Lat. A domestic forum or tribunal. The visitatorial power is called a *forum domesticum*, calculated to determine *sine strepitu*, all disputes that arise within themselves. Lord Mansfield, C. J. 1 *W. Bl.* 82.

FORUM DOMICILII. L. Lat. The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 *Kent's Com.* 463.

FORUM ECCLESIASTICUM. L. Lat. An ecclesiastical or spiritual court, as distinguished from a secular one. *Si de testamento oriatur contentio, in foro ecclesiastico debet placitum terminari*; if a contest arise about a will, the plea or suit should be determined in an ecclesiastical court. *Bract.* fol. 61. *Artic. Cleri*, c. 6. Called also *iudicium ecclesiasticum*. *Bract.* fol. 175, 401.

FORUM ORIGINIS. L. Lat. The forum or court of nativity; the domicile of

nativity, or place of a person's birth, considered as a place of jurisdiction. 5 *Vesey, Jr.* 750, 760. 2 *Kent's Com.* 430, 431, note.

FORUM REGIUM. L. Lat. The king's court. *Stat. Westm.* 2, c. 43.

FORUM REI, or REI SITÆ. L. Lat. The forum or court of the thing, [*res, rei*;] the court of the place where a thing claimed is; the tribunal where the property is. *Story's Conflict of Laws*, § 325 k. The place where a thing in controversy is situated, considered as a place of jurisdiction and remedy. 2 *Kent's Com.* 463.

FORUM REI GESTÆ. L. Lat. The forum or court of a *res gesta*, (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 *Kent's Com.* 463.

FORUM REL. L. Lat. The forum or court of the defendant, [*reus, rei*;] the court of the place where the defendant is, or resides. *Bract.* fol. 401. The same with *forum domicilii*, (q. v.) See *Actor sequitur forum rei*.—*Forum sequitur reum*. The court follows the defendant. 2 *Salk.* 549. In transitory cases, a party may be sued anywhere.

FORUM SÆCULARE. L. Lat. The secular forum or court, as distinguished from the spiritual or ecclesiastical. *Videatur prima facie quod cognitio super catallis et debitis pertineat ad forum sæculare*. It seems *prima facie*, that jurisdiction over chattels and debts should belong to the secular court. *Bract.* fol. 175. Called also *forum laicale*. *Id. ibid.* *Id.* fol. 401.

FORURTH. In old records. A long slip of ground. *Cowell*.

FOS. L. Fr. Fosse; the Fosse. *LL. Gul. Cong.* l. 30. See *Fosse*.

FOS. *stag. repe. que vi. diversi cursus aquarum, Pœcunt assisam; mercatum, feria, bancum.*

A Latin couplet, artificially constructed of words and parts of words, anciently used as an aid to the memory, to show in what courts certain kinds of disseisin by nuisance were cognizable. By writing the abbreviated words at length, the following sentence is produced: *Fossatum, stagnum, sepesque, via, diversi cursus aquarum, pœcunt assisam; mercatum feria, bancum*. In literal English,—ditch, pool, hedge, way, diverted water-courses, require the assise; market and fair, the bench; that is, disseisins by digging a ditch, raising or lowering a pond, building or throwing down a hedge, obstructing or narrowing a road, and di-

verting a water-course, must be determined before the justices of assise; disseisins of a market and fair, before the bench, (that is the Court of Common Bench, or Common Pleas.) *Reg. Orig.* 199, *nota*.

FOSDIKE. A canal seven miles in length, made by King Henry I. leading to the river Trent, in Lincolnshire. *Callis on Sewers*, [81.] 101. See *Cowell*, *voc. Fossatum*.

FOSSA. Lat. In the civil law. A ditch, a receptacle of water, made by hand, (*receptaculum aquæ manus facta*.) *Dig.* 48. 14. 1. 5.

FOSSA. Lat. In old English law. A ditch. See *Fossatum*.

A pit full of water, in which women committing felony were drowned. See *Furca*.

A grave or sepulchre. *Spelman*.

FOSSATUM. L. Lat. [from *fossa*, q. v.] In old English law. A dyke; a bank of earth thrown up out of a ditch. *Glanv.* lib. 13, c. 34. *Bract.* fol. 115. *Fleta*, lib. 1, c. 24, § 8. *Stat. Westm.* 2, c. 46.

A ditch or trench. The same with *fossa*. *Spelman.* *Reg. Orig.* 92 b, 198 b, 199.

A moat or fosse around an encampment or fortified place. *Spelman*.

A canal or cut from a river. *Cowell.* *Cart.* 20 Hen. III. cited *ibid*.

A place fenced with a ditch. *Cowell*.

FOSATORUM OPERATIO. L. Lat. In old English law. Fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the ditches around a city or town, for which some paid a contribution, called *fossagium*. *Cowell.* *Kennet's Glossary*, cited *ibid*.

FOSSE. L. Fr. A dyke or ditch. *Britt.* c. 20.

FOSSELLUM. L. Lat. [from *fossa*, q. v.] In old records. A small ditch. *Cowell*.

FOSSE WAY, or FOSSE. [L. Fr. *fos*.] One of the four ancient Roman Ways through England. *Spelman.* *Id.* *voc. Ikenild Street*.

FOSTERLAND. Land given, assigned or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, &c. *Cowell.* *Blount*.

FOTMEL. [L. Lat. *fotmellus*.] In old English law. A weight of lead of seventy pounds; a pig of lead. *Cowell.* See *Charrus*.

FOTMELLUS. L. Lat. In old English law. A fotmel or pig of lead. In *Fleta*,

this word is repeatedly mis-printed *fotmellus*. *Fleta*, lib. 2, c. 12, § 1.

FOUNDER. [L. Lat. *fundator*.] One who endows a corporation, or gives the revenues or funds for its establishment.* 1 *Bl. Com.* 481. 2 *Ken's Com.* 303.

One who gives a corporation its existence by incorporating it.* In England, the king is the general founder of all colleges and hospitals. 1 *Bl. Com.* 481. See *Fundator*.

FOUNDEROSA. L. Lat. Founderos; out of repair, as a road. *Cro. Car.* 366.

FOUNINARE. L. Lat. In old forest law. To fawn; to bring forth the young of the deer. *Fleta*, lib. 2, c. 41, § 32. A corruption or misprint for *feomare*, or *foinisare*.

FOUNT. L. Fr. [from *faire*, q. v.] (They) do or did; (they) make. *L. Fr. Dict.* *Que fount defaute*; who make default. *Fet Assaver*, § 19.

FOUR. Fr. [from Lat. *furnus*, q. v.] In old French and Canadian law. An oven. *Four banal*; a banal oven. The oven of a lord at which his tenants were required to bake their bread. *Dunkin's Address*, 17. The exclusive right of keeping an oven in the seignior.

FOUR CORNERS. To look at the four corners of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 *Smith's Lead. Cas.* 295.

FOUR SEAS. [L. Fr. *quater meres*; Lat. *quatuor maria*.] In English law. A term applied to the seas formerly considered as encompassing either the whole island of Great Britain, or England only. According to Selden, the four seas surrounding the whole island of Great Britain were, 1. The Western, called *Verginian*, including the Irish and Scottish seas; 2. The Northern, the *Scottish* or *North sea*; 3. The Eastern, the *German Ocean*; and 4. The Southern, or *British Channel*. *Seld. Mar. Claus.* lib. 2, c. 1. But the extent of these seas has not been precisely limited. As to the four seas which encompassed England only, see *Meadows' Obs. on the Dominion of the Seas*, 11. *Seld. Mar. Claus.* lib. 2, c. 31. *Hargr. Co. Litt.* Note 115, lib. 2. Britton mentions three seas; the Sea of France, of Ireland and of Scotland, (*la mere de France, de Irland ou de Escoce*.) *Britt.* c. 122. The term *four seas* is used in the books as a term of territorial limitation. Thus, a fine was said to bar all persons of full age, out of prison and of good memory, within

the *four seas* the day it was levied. 4 *Co.* 125. Within the *four seas* is as much as to say, within the jurisdiction of the king of England. 2 *Inst.* 253.

FOURCHER, *Forcher*, *Foercher*. L. Fr. [from *fourcher*, to divide, or fork.] In old English practice. A term applied to a particular mode of casting essoins by two or more tenants, *simul et vicissim*; that is, alternately, and in succession, so as to prolong the proceedings, and thereby delay the demandant. For this purpose, when a *præcipe* was brought against A. and B., A. was essoined and B. appeared, and had *idem dies* (the same day) given him; at which day A. appeared, but B. cast an essoin; at the *dies datus*, A. was essoined again and B. appeared, and so alternately. This was called *fourcher* (that is, to divide,) by essoin, because they divided themselves in delay of the demandant, by essoins and appearances interchangeably. 2 *Reeves' Hist. Eng. Law*, 122. 2 *Inst.* 250. *Termes de la Ley*. This practice was abolished by statute Westminster 1, ch. 43.

FOURME. L. Fr. Form. *Yearb.* T. 1 *Edw.* II. 9.

FOUS. L. Fr. Fools. *Fous nâstres*; natural or born fools. *Britt.* c. 10.

FOVEA. Lat. A grave. *Cowell*.

POWER. L. Fr. To dig; to cut; to cut down. *Yearb.* M. 7 *Edw.* III. 1. *Kelham*.

FOWLS OF WARREN. In English law. Birds of game;* which are divided by Lord Coke into three kinds: *campestris*, [field birds,] as the partridge, quail, rail, &c.; *silvestres*, [wood birds,] as the pheasant, woodcock, &c.; and *aquatiles*, [water fowl,] as mallard, heron, &c. *Co. Litt.* 233 a. But according to Manwood (who supports his opinion by referring to the Register) there are but two fowls of warren, the pheasant and the partridge. *Manwood, Forest Law*, c. 4, s. 3. *Reg. Orig.* 93 b. 2 *Bl. Com.* 38, note (b.) See *Free warren*.

FOY, *Foi*. L. Fr. Faith; fidelity. *Litt.* sect. 85. *Britt.* c. 29. *En bonne foy*; in good faith. *Kelham*.

Oath. *Par sa mayne et par sa foy*; by his hand and by his faith. *Britt.* c. 70.

FOYABLE. L. Fr. Faithful. *Kelham*.

FOYAL, *Foial*. L. Fr. Faithful. *Litt.* sect. 85.

FRA. L. Fr. [from *faire*, q. v.] Shall do or make. *Et que le fra*; and whoever shall do so. *Stat. Westm.* 1, c. 26. *Frons*

nostre brefs; we will make our writ. *Britt.* c. 45.

FRACTIO. Lat. [from *frangere*, to break.] A breaking; a breach. *Fractio fidei*; a breach of promise or of trust. 1 *Rep. in Ch.* Appendix, 8.

FRACTION. [from Lat. *fractio*, q. v.] A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole. "The law loves neither fractions of estates, nor fractions of constructions." *Bacon's Arg.* Case of Revocation of Uses.

FRACTION OF A DAY. The division or breaking up (Lat. *fractio*, from *frangere*, to break,) of a day into smaller portions of time.* In general, the law does not allow of the fraction of a day, or, as it is otherwise expressed, the law rejects all fractions of a day, in order to avoid disputes. 2 *Bl. Com.* 141. *Co. Litt.* 135 b. 9 *East*, 151, 154. *Fractiorem diei non recipit lex*. *Lofft's R.* Appendix 572. Therefore, where an act is to be done, as money to be paid on a certain day, it is sufficient if it be paid at any time during the day, that is, before twelve o'clock at night. 2 *Bl. Com.* 141. The law, however, does admit of the fraction of a day in certain cases, where it is necessary to distinguish for the purposes of justice, [as where two acts are done on the same day, and it is important to show which was actually done first;] and according to Lord Mansfield, an hour may admit of a similar division, where it is necessary, and can be done, for it is not like a mathematical point which cannot be divided. 3 *Burr.* 1434. See 4 *Kent's Com.* 95, note. 11 *Howard's R.* 411.

FRACTOR. Lat. [from *frangere*, to break.] In old English law. A breaker. *Fractores gaolarum*; gaol or prison-breakers. *Fleta*, lib. 2, c. 52, § 12.

FRACTURA NAVIUM. Lat. The breaking, or wreck of ships; the same as *naufragium*, (q. v.) See *Shipwreck*.

FRANC. L. Fr. Free. See *Frank*, *Fraunc*, *Fraunche*.

FRANC ALEU, or **ALLEU**. Fr. In French law. Free land; allodial land; an estate entirely free, and not holden of any superior, and wholly exempt from all seigniorial rights and services. *Argou, Inst. au Droit Francais*, tom. i. 194; cited 3 *Kent's Com.* 498, note. *Hargr. Co. Litt.* Note 3, lib. 2. *Guyot, Inst. Feod.* ch. 28. A term used, in Lower Canada, to denote

an absolute right to real estate, as distinguished from a tenure. *Brande*. In old French law, it is often simply called *aleu*, or *alleu*. *Esprit des Loix*, liv. 31, c. 8. See *Alleu*.

FRANCHIARE. L. Lat. In old English law. To enfranchise; to make free. *Liber fuit quia franchiatus est*; he was free because he was enfranchised. *Bract*. fol. 277 b.

FRANCHILANUS. L. Lat. [from Fr. *franche*, or *frank*, free.] In old English law. A freeman. *Sciatis me dedisse—cum villanis et franchilano, nomine, Hamone*, &c.: Know ye that I have given—with the villeins and the freeman, named Hamon, &c. *Blount*. 1 *Mon. Angl.* fol. 442 b. *Carta Hen. IV.* cited *ibid*.

A freeholder or free tenant; a franc-laine, frankleyn or frankleyn. *Spelman*, *Reliq.* 167. *Fortescue de L. L. Angliæ*, c. 20, note (m.)

FRANCHISE. L. Fr. and Eng. [L. Fr. *franchise*, from *franch*, free; L. Lat. *francheria*, *francisia*.] In English law. A liberty; a privileged place, (*locus immunitis*.) *Spelman*. *Pur encheson des franchises ou les felons sont receves*; by reason of the liberties where the felons are harbored. *Stat. Westm.* 1, c. 9. An immunity or exemption from ordinary jurisdiction. *Termes de la Ley*. *Blount*. See *Liberty*.

A royal privilege, or a branch of the prerogative subsisting in the hands of a subject, and arising either from royal grant, or from prescription, which presupposes a grant; a species of incorporeal hereditament. *Finch's Law*, b. 2, ch. 14. 2 *Bl. Com.* 37. 2 *Steph. Com.* 14. Such as the privileges to be a county palatine; to be a corporation; to have a bailiwick or liberty exempt from the sheriff of the county; to hold a court leet; to have waifs, wrecks, estrays, treasure trove, royal fish, forfeitures and deodands; to have a fair or market, or ferry, or the like, with the right of taking toll there; or to have a forest, chase, park, warren or fishery. 2 *Steph. Com.* 14, 15. 1 *Crabb's Real Prop.* 483—541, §§ 623—697.

In American law. A particular privilege conferred by grant from government and vested in individuals. 3 *Kent's Com.* 458. As, to be a corporation; to have a ferry, bridge, turnpike or rail-road. *Id.* 458, 459, and notes. Corporations are the most usual franchises known in our

law. *Id.* 459. See 2 *Hilliard's Real Prop.* 45—74.

Franchise is a slight variation from the law French *franchise* used in Britton. *Frankise* is a corrupted form given by Kellham, which indicates the old pronunciation of the word.

FRANCIA. L. Lat. France. *Bract*. fol. 427 b.

FRANCIGENA. L. Lat. [from *Francus*, French, and *genitus*, born.] In old English law. A Frenchman; one born in France. *Sunt aliqui Francigenæ in Francia, qui sunt ad fidem utriusque [regis]*; there are some Frenchmen born in France, who owe allegiance to both kings. *Bract*. fol. 427 b.

Any alien, as distinguished from an Englishman. *Utrum sit Anglicus, vel Francigena*. *Bract*. fol. 135 b.

FRANCISIA. L. Lat. A franchise. *Spelman*.

FRANCLAIN, *Francein*, *Frankleyn*. L. Fr. and O. Eng. [L. Lat. *franchilanus*.] In old English law. A freeholder, freeman or gentleman, (*libertus*, *libertinus*, *municeps*;) the opposite of a villein. *Fortescue de L. L. Angliæ*, c. 29, note (m.) *Dufresne*, voc. *Franchilanus*.

FRANCLING, *Francein*. [L. Fr. *franclein*; L. Lat. *franchilanus*.] In old English law. A freeman, (*libertus*;) a freeholder, or free tenant, (*qui libere tenet*.) *Spelman*.

FRANCUS. L. Lat. [from L. Fr. *franc*.] In old European law. Free. See *infra*.

A freeman, (*liber*.) *Spelman*. A powerful man, (*un homme puissant*;) as distinguished from *debilis persona*, in the capitularies of the French kings. *Esprit des Loix*, liv. 30, c. 25.

A Frank. *Spelman*.

A Frenchman. *Omnibus hominibus suis, Francis et Anglis*; to all his subjects, French and English. A common expression in charters of the Anglo-Norman kings.

FRANCUS BANCUS. L. Lat. [L. Fr. *frank bank*.] In old English law. Free bench. *Consuetudo est in partibus illis quod uxores maritorum defunctorum habeant francum bancum suum de terris sockmannorum*. *Bract*. fol. 309. See *Free bench*.

FRANCUS HOMO. L. Lat. In old European law. A free man. *Domoclay*. *Apud duodecim homines bene francos Sali-*

cos; before twelve good free Salic men. *Spelman. Form. Solenn. c. 168, cited ibid.*

FRANCUS PLEGIUS. L. Lat. In old English law. A frank pledge, or free pledge. *Spelman, voc. Francus. See Frank pledge.*

A decennary or friborg, (properly *francum plegium*.) *Alium recipere in franco plegio,—illum à franco plegio dimittere;* to receive another in a frank pledge,—to send him out of a frank pledge. *Bract. fol. 194 b.*

FRANCUS TENENS. L. Lat. In old English law. A frank or free tenant; a freeholder; (*liberè tenens.*) *Spelman, voc. Francus.* One who freely holds lands or estates of his lord. *Id. Si quis obierit francus tenens, &c.;* if any free tenant die, &c. *Assis. de Clarendon, cited ibid.*

FRANK, Franc, Franche, Fraunc, Fraunche. L. Fr. Free. *Et pur ceo que elections doivent estre franks, cy defend le roy sur la greue forfeiture que nul haute home, ne auter, per poyer des armes, ne per malice ou menaces, ne disturbe de faire franke election;* and inasmuch as elections ought to be free, the king commands, under a grievous forfeiture, that no great man, nor other, by force of arms, nor by malice or menaces, shall disturb any to make free election. *Stat. Westm. 1, c. 5. Frank et de frank estate. Yearb. M. 3 Edw. III. 14.*

Finch uses *frank* as an English word. "The demandant saith he is *frank*, &c. and he is found *frank* by the jury." *Law, b. 2, ch. 10.*

FRANKALMOIGN. L. Fr. and Eng. [L. Fr. *fraunche aumone*; L. Lat. *libera eleemosyna.*] In English law. Free alms. A spiritual tenure whereby a religious corporation, aggregate or sole, holds lands of the donor to them and their successors forever. *Litt. sect. 133. 2 Bl. Com. 101. 1 Steph. Com. 213.* This was anciently an ordinary kind of tenure in England, the peculiarity of which was its exemption from all secular or temporal service; the service to be performed being of a religious character, usually to pray for the soul of the donor and his heirs, dead or alive, and even that not certainly defined; hence it was called *frank* or *free*. *Britt. c. 66. 2 Bl. Com. 101, 102.* It is the tenure by which the parochial clergy, and very many ecclesiastical and eleemosynary foundations hold their land at this day; having been ex-

pressally reserved by the statute 12 Car. II. c. 24. *Id. 101. See Eleemosyna.*

"Frank almoign or lay fee," was a common issue in the old books. *Yearb. T. 1 Edw. II. 11.*

FRANK BANK. L. Fr. [L. Lat. *francus bancus.*] In old English law. Free bench. *Litt. sect. 166. Co. Litt. 110 b. Cuthrop's R. 165. See Free bench.*

FRANK CHASE. [L. Lat. *libera chacea.*] In English law. Free chase. The liberty or franchise of having a chase.

FRANK FEE. [L. Lat. *liberum feudum*, or *feudum.*] In English law. A species of tenure in fee simple, being the opposite of ancient demesne, or copyhold. *Termes de la Ley. 2 Bl. Com. 368. 3 Id. 166.* All land that was not ancient demesne was considered as *frank fee*. *Reg. Orig. 14 b. Id. 12. F. N. B. 16 D.* Where a fine was had of copyhold lands, or lands in ancient demesne, it altered the tenure, and converted them into *frank fee*. *2 Bl. Com. 368. 3 Id. 166.* In feudal law, *feudum francum* was a free fee or fief, for which no service was due. *Cowell. Fachineus & Zasius de Feudis, cited ibid.*

FRANK FERM. [Fr. *fraunk ferme*; L. Lat. *libera firma.*] In English law. Lands in socage tenure, described by Britton as lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof, neither homage, ward, marriage nor relief can be demanded. *Britt. c. 66. 2 Bl. Com. 80.*

FRANK-FOLD, *Frank-faulde.* [L. Fr. *franche faude*; L. Lat. *falda libera.*] In old English law. Free fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seignior, in his fold, in his demesnes, to manure his land. *Keilo. 198. Yearb. H. 1 Edw. III. 4. See Faldage.*

FRANK LAW. [L. Fr. *fraunche ley*; L. Lat. *libera lex, lex terræ.*] In old English law. The liberty of being sworn in courts, as a juror or witness; one of the ancient privileges of a freeman, or free and lawful man, (*liber et legalis homo.*) Otherwise called *the law of the land*, (*lex terræ*), or simply, *law*, (*lex*).* The nature of this privilege may be understood from Bracton's description of the consequences of losing it, among which the principal one was, that the parties incurred perpetual infamy, so that they were never afterwards to be admitted to oath, because they were

not deemed to be *otherworth*, (that is, not worthy of making oath,) nor allowed to give testimony. *Perpetuam infamiam incurrant, et legem terre amittant, et ita quod nunquam postea ad sacramentum admittantur, quia de cetero non erunt sithesworth, nec ad testimonium recipiuntur.* *Bract.* fol. 292 b. This was one of the punishments of jurors who had been convicted of perjury. *Id. ibid.* See *Amittare liberam legem*, *Otherworth*, *Liber et legalis homo*, *Law-worth*.

* * This term has been very generally defined, "the privilege of the law's protection," and "the benefit of the free and common law of the land." *Holthouse. Wharton's Lex.* But that it had a more particular and determinate meaning is clear both from the testimony of the ancient writers, and from the peculiar signification of the word *law*, which, from a very early period, denoted an *oath*, or the taking or making of an *oath*; as in the common expressions *wager of law*, and *making law*. A *lawful* man, (*legalis homo*), was one who was competent to be sworn as a juror or witness; and the word *lawful* is used in this sense in jury process, to this day. 3 *Bl. Com.* 340, 341, 352. See *Law-worth*.

FRANKLEYNE. [L. Lat. *franchilanus*, q. v.] In old English law. A substantial householder; a freeman or gentleman. *Fortescue de LL. Angliæ*, c. 29, and note (m). In modern spelling, a franklin.

Franklaine (q. v.) is another form of this word, used in the note last referred to; where Chaucer's description of the Franklin is given at length. And see *Frankling*.

FRANK MARRIAGE. [L. Lat. *liberum maritagium*.] In English law. A species of entailed estate now grown out of use, but still capable of subsisting. It is defined to be, where tenements are given by one man to another, together with a wife, who is the daughter or cousin [that is, of the blood] of the donor, in frank marriage. *Litt. sect. 17.* By such gift, the donees have the tenements to them and the heirs of their two bodies begotten, that is, they are tenants in special tail. 2 *Bl. Com.* 115. 1 *Steph. Com.* 232. The land itself so given in consideration of marriage (*propter nuptias*), was called *maritagium*, and it was called *free*, because it was free and quit from all secular service until the third heir inclusive, (*terra sic data quæta sit et libera ab omni seculari servitio—usque*

ad tertium heredem.) *Bract.* fol. 21, 21 b. *Cowell. Blount.* "Hereditaments given in frank marriage, that is to say, *freely* in marriage with one's kinswoman." *Finch's Law*, b. 2, ch. 3, p. 123.

FRANK PLEDGE. [L. Fr. *frank plegge*; L. Lat. *francus plegius*, *francum plegium*, *franciplegium*.] In English law. A free pledge; a decennary, tithing or friborg; so called because every freeman composing it was a *pledge* or security for the good conduct of the others, for the preservation of the public peace. *Bract.* fol. 124 b. *Fleta*, lib. 2, c. 52, §§ 4—8. *Crabb's Hist. Eng. Law*, 18.

A free surety; an inhabitant or member of a decennary, or friborg. 1 *Bl. Com.* 114, 115. 1 *Steph. Com.* 114. 4 *Bl. Com.* 252. 2 *Inst.* 73. See *Francus plegius*, *Fri borg*.

FRANK TENANT. L. Fr. A freeholder. *Litt. sect. 91.*

FRANK TENEMENT. L. Fr. [L. Lat. *liberum tenementum*.] In English law. A free tenement, freeholding or freehold. 2 *Bl. Com.* 61, 62, 104. 1 *Steph. Com.* 207. *Bract.* fol. 207. Used to denote both the tenure and the estate. See *Freehold*.

FRASSETUM. L. Lat. In old English law. A wood, or ground that is woody. *Co. Litt.* 4 b. *Shep. Touch.* 95. *Blount* considers it a corruption of *frazinetum*, a wood where ashes grow.

FRATER. Lat. [Fr. *frere*.] A brother. *Frater consanguineus*; a brother by the father's side. 2 *Bl. Com.* 232.

Frater uterinus; a brother by the mother's side; a uterine brother. *Id.*

Frater nutricius; a bastard brother. *Blount.*

Frater fratri uterino non succedet in hereditate paterna. A brother shall not succeed a uterine brother in the paternal inheritance. 2 *Bl. Com.* 223. *Fortescue de Laudibus LL. Angliæ*, c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Will. IV. c. 106, § 9.

FRATERIA. L. Lat. [from *frater*, a brother.] In old records. A fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, &c. of their living brethren, and the souls of those that were dead. *Cowell.*

FRAUD. [L. Fr. *fraude*; Lat. *fraus*, *dolus malus*, *dolus*.] Any cunning, deception or artifice, used to circumvent, cheat

or deceive another; (*omnem calliditatem, fallaciam, machinationem ad circumveniendum, fallendum, decipiendum alterum adhibitam.*) *Dig.* 4. 3. 1. 2. *Id.* 2. 14. 7. 9.—Every kind of artifice made use of by one person for the purpose of deceiving another; (*toute espece d'artifice, dont quelque un se sert pour entromper un autre.*) *Pothier, Traite des Oblig.* part 1, c. 1, sec. 1, art. 3, § 3.

Both these definitions are quoted with approval by Mr. Justice Story, who observes of the former, "This definition is, beyond doubt, sufficiently descriptive of what may be called positive, *actual* fraud, where there is an intention to commit a cheat or deceit upon another, to his injury. But it can hardly be said to include the large class of *implied* or constructive frauds which are within the remedial jurisdiction of a court of equity. Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another." 1 *Story's Equity Jur.* § 187. See 2 *Kent's Com.* 483, note.

The difficulty of giving any precise definition of fraud has been frequently admitted. See observations of Ware, J. 3 *Story's R.* 611, 634. See *Jeremy's Equity Jurisd.* 383, and the opinion of Lord Chancellor Hardwicke, in *Chesterfield v. Janssen*, in which the different species of frauds against which equity will give relief, were classified. 2 *Vesey*, 125. 1 *White's Equity Cases*, 344. As to fraud in sales or mortgages of chattels, see 2 *Kent's Com.* 512—532, and notes. As to fraud in voluntary assignments for the benefit of creditors, see *Id.* 532—536. *Burrill on Assignments*, chap. xxxii.

FRAUD IN FACT. Fraud which consists in, or appears from matter of fact as found by a jury; as distinguished from fraud *in law*, (q. v.) *Actual* or positive fraud, which must be proved; as distinguished from *constructive* fraud, which may be presumed, implied or inferred by law.* Fraud is sometimes mere *matter of fact*, and sometimes the *conclusion of law* from facts. Lord Mansfield, 2 *Burr.* 937. Fraud in fact seems to answer to that species of *dolus* which the Roman law expressively distinguished as *bad*, (*malus*.) See *Dolus malus*.

FRAUD IN LAW. Fraud, in contem-

plation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud, (q. v.) See 2 *Kent's Com.* 512—532, and notes. Fraud is never presumed, that is, without proof. 11 *Wendell's R.* 187, 192. 2 *Texas R.* 365. But fraud is often a conclusion of law, which courts will infer from acts and circumstances, whether the existence of a fraudulent purpose, in the strict sense, be proved, or not. 24 *Connecticut R.* 94.

FRAUDARE. Lat. [from *fraus*, q. v.] In the civil law. To deceive, cheat or impose upon; to defraud. *Nemo videtur fraudare eos qui sciunt et consentiunt.* No one seems [is supposed] to deceive those who know and consent. *Dig.* 50. 17. 145. [187.] Where a party has full knowledge of facts, and consents to what another does, he is not considered to have been deceived by him.

FRAUDE. L. Fr. Fraud. *Sauns* fraude faire; without committing fraud. *Britt.* c. 16.

FRAUDS, STATUTE OF. The celebrated statute of 29 Charles II. c. 3, passed A. D. 1677, otherwise called the *Statute of Frauds and Perjuries*; styled, by an eminent commentator, "the most comprehensive, salutary and important legislative regulation on record, affecting the security of private rights." 2 *Kent's Com.* 494, note. It is said to have been the joint production of Sir Matthew Hale, Lord Keeper Guilford, and Sir Leoline Jenkins. The chief object of passing this statute was to prevent the facility to *frauds* and the temptation to *perjury*, held out by the enforcement of obligations depending for their evidence upon the unassisted memory of witnesses. Hence its leading feature is the requirement of some instrument or note in *writing*, signed by the parties to be charged, or their authorized agents, to render contracts, in certain specified cases, valid. See a summary of the provisions of this statute, in 2 *Kent's Commentaries*, 494, note. And see *Smith on Contracts*, 32, *et seq.*

FRAUDULENT CONVEYANCE. A conveyance, the object, tendency or effect of which is to defraud another, or the intent of which is to avoid some debt or duty due by, or incumbent on the party making it.* See 2 *Kent's Com.* 440. 4 *Id.* 462. An immoral and corrupt motive is not es-

essential to render the act fraudulent as to creditors. It is constructively so, if it necessarily leads to the injury of the creditor. 1 *B. Monroe's R.* 157. 2 *Kent's Com.* 441, note.

FRAUDULENT CONVEYANCES, Statutes of, (or against.) The name given to two celebrated English statutes,—the stat. 13 Eliz. c. 5, made perpetual by 29 Eliz. c. 5; and the stat. 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18. By the first of these statutes, (13 Eliz. c. 5,) after declaring its object to be "for the avoiding and abolishing of feigned, covinuous, and fraudulent feoffments, gifts, grants, alienations, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which feoffments, &c. have been and are devised and contrived of malice, fraud, covin, collusion or guile to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, &c.;" it is enacted that every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, &c. to or for any intent or purpose before declared or expressed, shall be deemed and taken (only as against that person, his heirs, &c. whose actions, debts, &c. are or may be in any wise disturbed, hindered, delayed or defrauded,) to be utterly void and of no effect. See *Roberts on Fraud. Conv.* 2, 3. *Burrill on Assignments*, 397—399.

This statute has been universally adopted in American law, as the basis of our jurisprudence on the subject of conveyances, or assignments, to defraud creditors. *Id.* 399, 402, et seq. 1 *Story's Eq. Jur.* § 353. 4 *Kent's Com.* 462, 463.

The stat. 27 Eliz. c. 4, § 2, enacts that every conveyance of lands, tenements or other hereditaments whatsoever, made with the intent and purpose to defraud and deceive any person or persons, bodies politic or corporate, who shall purchase the same, shall be deemed and taken (only as against that person or persons, body politic or corporate, his and their heirs, successors, executors, administrators and assigns,) to be utterly void, frustrate and of none effect.

FRAUNCHE, Fraunch. L. Fr. Free. *Fraunche ley*; frank-law. *Britt.* c. 52. *Ascuns fraunches, et ascuns enserves*; some free and some bound. *Id.* c. 54. *Fraunch pescherie*; free fishery, (q. v.)

FRAUNCHISE. L. Lat. A franchise;

a liberty; a place of exclusive jurisdiction. *Britt.* c. 19.

An exclusive privilege. *Id. ibid.*

Freedom; liberty, as distinguished from bondage. *En faveur de franchise*; in favor of liberty. *Id.* c. 49.

FRAUNK, Fraunch. L. Fr. Free; frank. *Fraunch estate*; a free estate. *Britt.* c. 31.

Fraunk home; a freeman. *Id. ibid.*

Fraunk ferme; frank or free farm. *Id.* c. 66.

Fraunk tenement; a free tenement; a freehold. *Id.* c. 31.

Fraunch plogge; frank pledge. *Id.* c. 20.

FRAUS. Lat. Fraud. More commonly called, in the civil law, *dolus* and *dolus malus*, (qq. v.) A distinction, however, was sometimes made between *fraus* and *dolus*; the former being held to be of the most extensive import. *Calv. Lex.* See *Dolus*. Calvin derives *fraus* from *ferre*, (or Gr. *φωρ*), to bear, to bear away or take away; its object usually being to take away another's right of property.

Fraus est eulare fraudem. It is a fraud to conceal a fraud. 1 *Vern.* 240. 1 *Story's Eq. Jur.* §§ 389, 390.

Fraus est odiosa et non presumenda. Fraud is odious and not to be presumed. *Cro. Car.* 550. But see *Fraud in law*.

Fraus et dolus nemini patrocinari debent. Fraud and deceit should defend or excuse no man. 3 *Co.* 78. *Fleta*, lib. 1, c. 13, § 15. *Id.* lib. 6, c. 6, § 5.

Fraus et jus nunquam cohabitant. Fraud and justice never dwell together. See *Jus et fraus, &c.*

Fraus meretur fraudem. Fraud merits fraud. *Branch's Princ.*

FRAUS LEGIS. Lat. In the civil law. Fraud of law; fraud upon law. See *In fraudem legis*.

FRAVINETUM. L. Lat. [from *fraxinus*, an ash.] In old English law. A wood of ashes; a place where ashes grow. *Co. Litt.* 4 b. *Shep. Touch.* 95.

FREA. L. Lat. In old European law. A female ward, (*quæ sub alterius potestate est; pupilla.*) *Spelman.* *LL. Longob.* lib. 2, tit. 2, l. 4, cited *ibid.*

FRECTA. L. Lat. Fretwork. *Cowell.*

FRECTARE, Fretare. L. Lat. In old English law. To freight or load a vessel. *Frectatus*; freighted. *Navis frectata et fretata*; a ship freighted, a laden vessel. *Cowell.* *Fretati fuerunt cum vinis*; they were freighted with wines. *Id.*

FRECTUM, *Fretum*. L. Lat. In old English law. Freight. *Quoad frectum navium suarum*; as to the freight of his vessels. *Blount. Plac. Parl.* 21 *Edw.* I. cited *ibid.*

FREDUM, *Freda, Fredus*. L. Lat. [from Sax. *fred*, *fride*, peace.] In old European law. A sum or price paid to the magistrate, as a recompense for the protection which he afforded against the right of revenge. 1 *Robertson's Charles V.* Appendix, Note xxiii. *Esprit des Lois*, liv. 30, c. 20. This was in addition to the composition paid to the injured party, or his relatives, as a satisfaction for the injury committed, and it was usually equal to the third part of the composition. *Id. ibid.* See *Composition*. Spelman considers it to have been a fine paid for violation of the public peace, (*propter pacem violatam*,) or as the price of obtaining peace, (*ob impetrandam pacem*;) but this idea is combated by Dr. Robertson, who follows the opinion of Montesquieu. See *supra*. The *fredum* is supposed by Spelman to be the origin of the fines or amercements imposed upon parties to actions under the old English practice.

FREDWITE, *Fridwite, Frithwite*. Sax. [from *fred*, or *frith*, peace, and *wite*, a fine.] In Saxon law. A sum of money paid to obtain peace, or exemption from prosecution. The same as *fredum*, (q. v.) *Spelman*, voc. *Fredum*.

FREE. [Sax. *freo*; Lat. *liber*; L. Lat. *francus*; L. Fr. *fraunc*, *fraunck*, *fraunche*.] Not bond or servile; not subject to servitude; as a *freeman*, (q. v.)

Certain or honorable; the opposite of base; as *free service*, *free socage*, (qq. v.)

Privileged or exclusive; the opposite of common; as a *free chapel*, a *free fishery*, a *free warren*, (qq. v.)

* * The word *free*, as used in the old common law, imported something very different from its prevalent modern meaning. Thus, as applied to *persons*, it had not the sense of absolute *independence* now generally annexed to it; no person, though distinguished as a *freeman*, being exempt from service of some kind or other. See *Liber homo*. So, in its application to *rights*, it had by no means its present popular sense of *common, unrestricted, open to all*, but directly the reverse,—importing either an exclusive right, as in the case of a *free fishery* and a *free warren*, (qq. v.) or a special exemption from some general duty

or burden, as from a tax, toll, tribute, &c. This very strikingly appears in the use of the word *franchise* itself, which, though properly translated *freedom* or a *freedom*, always denoted, as it still does, either an *exempt jurisdiction*, or an *exclusive privilege*, and it has the latter sense even in American law. So, in English law at this day, a *liberty* is a place of exclusive jurisdiction; a district exempt from the sheriff of the county. 2 *Steph. Com.* 14, 15. This technical meaning (as it may be called) of the word *free* seems more aptly expressed by the L. Latin *francus*, and L. Fr. *fraunck*, than the pure Latin *liber*.

FREE BENCH. [L. Fr. *frank bank*; L. Lat. *francus bancus, liber bancus, libera sedes*.] In English law. Dower in copyhold lands. 2 *Bl. Com.* 129.—That estate in copyhold lands which a wife has after the death of her husband, for her dower, according to custom. *Kitch.* fol. 102. *Termes de la Ley*.

* * This appears to have been, from the earliest period, a customary estate, peculiar to certain lands, and held by the widow on the condition of remaining chaste and unmarried. *Id. ibid.* Bracton cites a case before Martin [de Pateshull] in the Bench, in the second year of Henry III. in which, to a demand of dower the defendant pleaded that the demandant ought not to have dower, because, after the death of her husband, she married again; and it is a custom in those parts that the wives of deceased husbands shall have their *free bench* of the lands of socmen, (*consuetudo est in partibus illis quod uxores maritorum defunctorum habeant francum bancum suum de terris sockmannorum*;) and shall hold it as dower for their lives; but if, after the death of their husbands, they married any one, the custom is, in that county, that they shall lose the dower they held in the name of the first husband. *Bract.* fol. 308 b, 309. This custom of *free bench* still prevails in the manors of East and West Enborne, and Chadleworth, in the county of Berks, at Torr, in Devonshire, Kilmersdon in Somersetshire, and other places in the west of England. 2 *Chitty's Bl. Com.* 129, note. In some places, the widow is entitled to half, and in others, to the whole of the husband's land, or otherwise, according to the custom, but it is always confined to lands of which the husband died seised. *Id. ibid.* *Litt.* sect. 166. *Co. Litt.* 110 b.

FREEBORD. [L. Lat. *francbordus*.] In old records. An allowance of land over and above a certain limit, or boundary, as so much beyond, or without a fence. *Cowell. Blount. 2 Mon. Angl.* fol. 241 a. The right of claiming that quantity. *Termes de la Ley.*

FREEBOROUGH. See *Freoborh, Fri-borg.*

FREE CHAPEL. [L. Lat. *libera capella*.] In English law. A chapel, or place of worship, so called, because *exempted* from the jurisdiction of the ordinary or diocesan. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. *Wharton's Lex. Termes de la Ley. Reg. Orig.* 40 b, 41.

FREE FISHERY. [L. Fr. *franche pescherie*; L. Lat. *libera piscaria*.] In English law. An exclusive right of fishing in a public river, being a species of royal franchise. *2 Bl. Com.* 39. *2 Steph. Com.* 22.—An exclusive right of fishery in a public navigable river, or sometimes in an arm of the sea, originating in a grant from the king. *1 Chitt. Gen. Pr.* 224.—An exclusive right to fish in any public water, as in an arm of the sea. *1 Crabb's Real Prop.* 114, § 108. See *3 Kent's Com.* 410.

In American law, the definition of a free fishery does not seem to be settled. In Massachusetts, it has been held not to be an exclusive right. *7 Pick. R.* 79. See *Angell on Water-Courses*, §§ 75, 76.

* * That free fishery properly imports an exclusive right, seems apparent from the well-settled meaning of the term *free* in the common law, as explained under that head. See *Free*. By using *free*, however, in its popular sense of *common*, free fishery has sometimes been made identical with *common* fishery, or a right of fishery common to all. This opinion is maintained by Mr. Schultes, in his *Essay on Aquatic Rights*, in which he also endeavors to show that free fishery and *common of fishery* (a still different species of the right,) import the same thing. Lord Coke is relied on in support of this last view, and Mr. Hargrave supposes the following passage from Coke Littleton to establish it: "So a man may prescribe to have *separalem piscariam*, [a several fishery] in such a water, and the owner of the soil shall not fish there; but if he claim to have *communiam piscariæ*, [common of fishery,] or *liberam piscariam*, [a free fishery,] the owner of the soil shall

fish there." *Co. Litt.* 122 a. The passage hardly seems to warrant the inference drawn from it. The opinion of Lord Mansfield, in *Seymour v. Lord Courtenay*, is also considered by Mr. Schultes as favoring his view that free fishery and common of fishery are alike. But that opinion only went the length of distinguishing a *several* from a *free* fishery, and the remark of Lord Mansfield, at the conclusion, shows that he regarded a *common of fishery* as quite a different thing from either. *5 Burr.* 2814, 2817. See *Yearb. M.* 4 Edw. III. 38.

That a free fishery signifies an exclusive right, seems to have been assumed by the court, (Lord Holt, C. J.) in *Smith v. Kemp*, where it is clearly distinguished from a common fishery. *1 Salk.* 637. What is said by Lords Coke and Mansfield, (*ubi supra*), merely goes to show that it is not so absolutely and rigidly exclusive as a *several* fishery, (the owner of which had it literally to himself,) but that it might or must be shared by another. The true idea of a free fishery seems to be, a franchise or monopoly which may be held by two or more, as well as a *single* individual, but which, in either case, is equally *exclusive* of the common right.

FREE-FOLD. See *Frank-fold, Foldage*.

FREEHOLD. [L. Lat. *liberum tenementum*; L. Fr. *frank tenement*.] In English law. An estate either of inheritance or for life, in lands or tenements of free tenure. *1 Steph. Com.* 217.—A possession of the soil which a *freeman holds* in fee, or at least for term of life. *Britt. c.* 32.

In American law. An estate of inheritance, or for life, in real property. *4 Kent's Com.* 24. *1 Hilliard's Real Prop.* 77.

* * *Freehold* is used in the common law to denote both the *tenure* by which an estate is held, and the *estate* itself. *1 Steph. Com.* 197, note (e). *Id.* 217, note (f). As a tenure, it was called *free*, to distinguish it from villeinage. (*Dicitur liberum tenementum, ad differentiam ejus quod est villenagium; quia tenementorum, aliud liberum, aliud villenagium.*) *Bract.* fol. 207. It is equivalent to tenure in free socage, and is the opposite of copyhold in modern English law. *1 Steph. Com.* 197. As an estate, it seems originally to have properly denoted an estate of inheritance; an estate for life being, according to Bracton, only a *quasi* freehold. *Liberum tenementum est id quod quis tenet sibi et hæredibus suis in feodo, et hæreditate; vel in feodo tantum.*

sibi et hæredibus suis. Item ut liberum tenementum, sicut ad vitam tantum, vel eodem modo, ad tempus indeterminatum, absque aliqua certa temporis præfinitione; freehold is that which one holds to him and his heirs, in fee, and inheritance; or in fee only, to him and his heirs. Also as freehold, as for life only, or in the same way for an indeterminate period, without any fixed limitation of time. *Bract.* fol. 207. The quality of an indefinite duration, here mentioned by Bracton, has always been the quality of a freehold estate. A term for years, for however long a period, and though far exceeding the duration of human life, is no freehold. *Bract.* fol. 27. 2 *Bl. Com.* 143.

FREEHOLD IN LAW, is where lands or tenements are descended to a man, and he may enter into them when he will; before his entry he has a freehold in law; after entry, he has a freehold in deed or fact. *Termes de la Ley.*

FREEHOLDER. [L. Lat. *liber tenens*; L. Fr. *frank tenant*.] He who possesses a freehold estate.

A free tenant; one who holds freely, (*qui libere tenet*.) This was anciently the peculiar right of a freeman. Hence, where a man gave lands to his villein, "to hold freely to him and his heirs," it made him a freeman. *Bract.* fol. 24 b.

FREELY. [Lat. *liberè*.] A common word in conveyancing. See *Libère*.

FREEMAN. [Lat. *liber homo*.] In civil and general law. One born or made free; the opposite of a slave. *Inst.* 1. 3, 4, 5. *Omnis homo aut est liber aut est servus.* *Bract.* fol. 4 b. See *Liber homo*.

In old European law. An allodial proprietor; the opposite of a vassal or feudal tenant, (*vassus* or *vassallus*.) *Esprit des Lois*, liv. 30, c. 17. 1 *Robertson's Charles V.* Appendix, Note viii.

In early English law. A free tenant, or freeholder; one who held land freely, as distinguished from a villein. *Mag. Charta*, 9 Hen. III. c. 14. *Id. Johan.* c. 20. *Bract.* fol. 24 b. 2 *Inst.* 27. See *Liber homo*.

In modern law. A member of a corporation, company or city, possessing certain privileges.* 3 *Steph. Com.* 196, 197. A member of a borough, having the right to vote at elections. *Com.* 240.

FREEMEN'S ROLL. In English law. A list of all persons admitted burgesses or freemen for the purpose of those rights which are reserved by the Municipal Corpo-

ration Act, (5 & 6 Will. IV. c. 76,) as distinguished from the burgesses newly created by the act, and entitled to the rights which it newly confers, who are entered on the burgess roll. 3 *Steph. Com.* 197. *Cole on Crim. Inform.* 224.

FREE PLEDGE. See *Frank pledge*.

FREE SERVICES. [L. Lat. *libera servitia*.] In feudal and old English law. Such feudal services as were not unbecoming the character of a soldier or a freeman to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 *Bl. Com.* 60, 61.

* * Bracton makes a wide distinction between holding freely and holding by free service. *Est longe aliud tenere liberè, et aliud tenere per liberum servitium; quia quamvis quis teneat per liberum servitium, non tamen propter hoc tenet liberè, quia tenementum quod conceditur villano, tenendum per liberum servitium, non facit villanum liberum, nisi teneat liberè, non magis quam villanagium facit liberum hominem villanum, si liber homo teneat per villanas consuetudines; quia tenementum nihil confert nec detrahit personæ, &c.*; it is one thing to hold freely, and a far different thing to hold by free service; because, though one may hold by free service, yet he does not on this account hold freely; because a tenement which is granted to a villein to hold by free service, does not make the villein a freeman, unless he hold freely, any more than villeinage makes a freeman a villein, if a freeman hold by villein customs; because the tenement neither adds to nor takes from the person, &c. *Bract.* fol. 24 b. See *Fleta*, lib. 3, c. 13, § 1.

FREE SHIPS. In international law. Neutral vessels, sometimes so called. It is sometimes stipulated in treaties that *free ships shall make free goods*; that is, that enemy's property on board of neutral ships shall be protected from seizure and confiscation. 1 *Kent's Com.* 126—128, and note. See *Wheaton's Intern. Law*, 507—532.

FREE SOCAGE. [L. Lat. *liberum socagium*.] A tenure by some certain and determinate service, (usually in England, fealty and rent;) called *free*, because the service was not only certain but honorable, and thus distinguished from *villein socage*, where the services, though certain, were of a baser nature. 2 *Bl. Com.* 79. 1 *Steph. Com.* 192, 194. *Termes de la Ley*, voc. *Socage*. This is the tenure by which the

great bulk of real property in England is now holden, having absorbed and swallowed up almost every other species of tenure. 2 *Bl. Com.* 79, 89. 1 *Steph. Com.* 197. Called also *common socage*, and in the statute 12 Car. II. c. 24, *free and common socage*. See *Socage*.

FREE SOCMEN. [L. Lat. *liberi sokemanni*.] In old English law. Tenants in free socage. *Glanv.* lib. 8, c. 7. 2 *Bl. Com.* 79.

FREE or FRANK TENURE. [L. Lat. *liberum tenementum*.] Freehold; the opposite of the ancient villeinage, and modern copyhold. 2 *Bl. Com.* 89, 90. See *Freehold*.

FREE WARREN. [L. Lat. *libera warrena*.] In English law. A royal franchise granted to a subject for the preservation or custody, (which the word *warren* signifies,) of certain animals called beasts and fowls of warren; being the exclusive right of taking and killing game within certain limits. 2 *Bl. Com.* 39, 417. 2 *Steph. Com.* 21. 1 *Chitt. Gen. Pr.* 223. See *Warren*. Called *free garren*. *T. Jon.* 5.

FREIGHT. [Lat. *navium, vectura*; L. Lat. *frectum*; Fr. *fret, nolis*; L. Fr. *freit*.] In maritime law. The price or sum paid for the actual transportation of goods by sea, from one place to another. 3 *Ken's Com.* 219.

In a larger sense. Any reward or compensation paid for the use of ships, including the transportation of passengers. *Id. ibid.*

Freight is the mother of wages. 2 *Show.* 283. 3 *Ken's Com.* 196. Where a voyage is broken up by *vis major*, and no freight earned, no wages, *eo nomine*, are due. *Id. ibid.*

FREIGHTER. In maritime law. The party by whom a vessel is engaged or chartered; otherwise called the *charterer*. 2 *Steph. Com.* 148. In French law, the owner of a vessel is called the freighter (*freteur*); the merchant who hires it is called the affreighter (*affreteur*). *Emerig. Tr. des Ass.* ch. 11, sect. 3.

FREINE. L. Fr. [Lat. *frazinus*.] An ash-tree. *Freines*; ashes. *Dyer*, 35 b, (Fr. ed.)

FREIT. L. Fr. Freight. *Kelham*.

FR'EM. A contraction of *fratrem*. 1 *Inst. Cler.* 10.

FRENDLESMAN. Sax. The ancient name of an outlaw (*utlaughe*), in England; so called, according to Bracton, because he

forfeited his friends, (*quod forisfacit amicos*;) all persons being forbidden to give him food or shelter, or to have any communication with him. *Bract.* fol. 128 b.

FRENDWITE. Sax. [from *friend*, a friend, and *wite*, a penalty.] In old English law. A fine exacted of one who harbored an outlawed friend. *Wharton's Lex.*

An acquittance or immunity from forefang, (*quietantia prioris prise*.) An acquittance from the penalty for taking provisions before the king's purveyors. *Fleta*, lib. 1, c. 47, § 15. *Cowell*.

FRENETICUS. L. Lat. In old English law. A madman, or person in a frenzy. *Fleta*, lib. 1, c. 36.

FRENTIKE. L. Fr. [L. Lat. *freneticus*.] Furiously insane; a madman. *Frentikes* in *lour rage*. *Britt.* c. 28. Hence *frantic*.

FREO. Sax. Free. *Spelman*, voc. *Friborga*.

FREOBORGH. *Freoborghes, Freeborches*. Sax. [from *freo*, free, and *bork*, or *borkes*, a pledge.] In Saxon law. A free surety, or free pledge. *Spelman*, voc. *Friborga*. 2 *Inst.* 73. Lord Coke observes that the term *free-barrow* continued to be used in his day, in some places. *Id. ibid.*

FREOBORHESHOFOD. Sax. [from *freoborches*, a free pledge, and *heofod*, head.] In Saxon law. The head of a friborg or free pledge; a chief pledge. *Spelman*, voc. *Friborga*.

Frequentia actus multum operatur. The frequency of an act effects much. 4 *Ca.* 78. *Wingate's Max.* 719, max. 192. A continual usage is of great effect to establish a right.

FRERE. L. Fr. A brother. *Frere eyne*; elder brother. *Frere puys*; younger brother. *Britt.* c. 75.

FRESCA. L. Lat. In old records. Fresh water, or rain and land flood. *Cowell.* *Somner Gavelkind*, p. 132, cited *ibid.* See *Frisca*.

FRESCHÉ. L. Fr. Fresh or new. *Britt.* c. 5. *Freschement*; freshly, newly. *Id.* cc. 15, 43. *Yearb.* P. 8 Edw. III. 1.

FRESH. [L. Lat. *friscus*; L. Fr. *fresche*; Lat. *recens*.] In old English law. Recent, or new. See *Fresh disseisin*, *Fresh force*.

Without profit; a term applied in the old books to land. *Celui que la terre tien i issint charge, la leaset gisee fresh, issint que home ne puit trover distress, &c.*; he who

holds the land so charged lets it lie *fresh*, so that the party cannot find a distress. *Stat. Gloucest.* c. 3. See *Yearb.* H. 3 Edw. II. 68. T. 2 Hen. VI. 1. Land was said to lie *fresh*, not only when there was no cattle, or thing distrainable upon the land, of the value of the rent, or other profit behind, but also, though there was a sufficient distress to be taken, yet if the land were so enclosed about as that the lord could not come to take and carry away the distress to the pound, it was said to lie *fresh*, that is, without profit to the lord. 2 *Inst.* 296.

FRESH DISSEISIN. [L. Fr. *fresche disseisine*; L. Lat. *frieca seu recens disseisina*.] By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh*, (*flagrante disseisina*.) *Bract.* fol. 162 b. No particular time was limited for doing this, but Bracton suggested it should be fifteen days. *Id.* fol. 163. See *Britt.* cc. 32, 43, 44, 65.

FRESH FINE. In old English law. A fine that had been levied within a year past. *Stat. Westm.* 2, c. 45. *Cowell.*

FRESH FORCE. [L. Fr. *fresche force*; L. Lat. *frieca fortia*.] In old English law. Force (that is, disseisin or forcement) newly done. *Britt.* c. 32. *F. N. B.* 7 C. A term applied to force committed in any city or borough, and for which a peculiar remedy, called an assise or bill of *fresh force*, was provided. See *Assise of fresh force*.

FRESH SUIT. [L. Lat. *recens insecutio*.] In English law. Immediate or speedy pursuit, or prosecution. The pursuit of an offender, or felon, as a thief, immediately, or as soon as possible after the robbery, including the prosecution of such pursuit until the apprehension and conviction of the offender. The object of this was to enable the party to recover his goods, which otherwise would belong to the king.* *Britt.* c. 15.

The early and speedy prosecution of a suit. *Stat. Glouc.* c. 9.

FRET. Fr. In French marine law. Freight. *Ord. Mar.* liv. 3, tit. 3.

FRETER. Fr. In French marine law. To freight a ship; to let it. *Emerig. des Ass.* ch. 11, sect. 3.

FRETEUR. Fr. In French marine

law. Freight. The owner of a ship, who lets it to the merchant. *Emerig. des Ass.* ch. 11, sect. 3.

FRETTUM. L. Lat. In old English law. Freight money. *Cowell. Rot. Claus.* 17 Johan. m. 16, cited *ibid.*

FRETUM. Lat. A strait. *Fretum Britannicum*; the strait between Dover and Calais, otherwise called *Fretum Gallicum*, and *Fretum Morinorum*. *Cowell, Appendix.*

FRIBORG, FRIBORGH. [L. Lat. *friborga, friborgus*, from Sax. *freo*, free, and *borh* or *borhes*, a pledge.] In Saxon and old English law. A free pledge, or frank pledge; one of the ancient Saxon names of the tithing or decennary; and also of the individuals who composed it; the chief of whom was called *friborgesheofod*, or *freoborhesheofod*, (qq. v.) *Spelman*, voc. *Friborga*. See *Tithing, Decennary*. Called in *Fleta, frichborgh. Fleta*, lib. 1, c. 47, § 10.

FRIBORGESHEOFOD. Sax. [from *friborgh*, a free pledge, and *heofod*, head.] A chief pledge, or head of a friborg. *LL. Edw. Conf.* c. 19.

FRIDHBURGUS, Frithburgus. [from Sax. *frith*, peace, and *borg*, a pledge.] In old English law. A kind of frank pledge, by which the lords or principal men were made responsible for their dependents or servants. *Bract.* fol. 124 b. It is usually confounded with the ordinary frank pledge, but seems to have been of a peculiar character. See *Frithborg*.

FRIDSTOLL, Fridstow, Frithstow. Sax. [from *frid*, or *frith*, peace, and *stol*, a seat, or chair, or *stow*, a place.] In Saxon law. A seat, chair or place of peace, (*cathedra pacis*;) an asylum, refuge or sanctuary for offenders. *Spelman. Cowell.* Called *Grithstole*, in an old rhyming charter of King Athelstan. *Blount*, voc. *Frodmortel*.

FRILAZIN. [from Anglo-Germ. *fre*, Sax. *freo*, free, and *laschen*, to let go.] In old European law. A freedman; one emancipated from bondage, (*manumissus, libertus, libertinus*.) *Spelman. Crabbe's Hist.* 9.

FRILINGI. L. Lat. [from Anglo-Sax. *fre*, free, and *ling*, offspring.] Persons of free descent, or freemen born; the middle class of persons among the Saxons. *Spelman.*

FR'IS. A contraction of *fratris*. 1 *Inst. Oler.* 10.

FRISCUS. L. Lat. [from Fr. *fresche*.]

In old English law. Recent or new. *Frisca fortia*; fresh force; force recently committed, (*vis nupera et recenter illata*.) *Spelman. Reg. Orig.* 108 a.

Fresh, as distinguished from salt. *Mariscus friscus*; fresh marsh. *Spelman. Aqua frisca*; fresh water. *Reg. Orig.* 97.

Uncultivated, as ground. *Terra jacens frisca et ad warect'*; land lying fresh and fallow. *Towne. Pl.* 69. See *Fresh*.

FRITH, *Fridh*. Sax. Peace. *Spelman*.

FRITHBORG. Sax. [from *frith*, peace, and *borg*, a pledge; L. Lat. *frithborga*, *frithburgus*.] In Saxon law. A pledge or surety for the peace, (*pacis securitas*.) Sometimes confounded with *friborg*, (*friborga*, *friborgus*.) *Spelman*.

FRITHBOTE. Sax. [from *frith*, peace, and *bote*, compensation.] In Saxon law. A compensation, satisfaction or fine for breach of the peace. *LL. Ina*, c. 23. *Crabb's Hist. Eng. Law*, 39. Otherwise called *fridwite*. The same as *fredum*, according to *Spelman*. See *Fredum*.

FRITHBRECH. Sax. [from *frith*, peace, and *brech*, a breaking.] In Saxon law. A breach or violation of the peace. *LL. Ethelred*, c. 6. *Cowell*.

FRITHSOCNE, *Frithsocn*. Sax. [from *frith*, peace, and *socne*, a liberty or franchise.] In Saxon and old English law. A liberty, franchise, or jurisdiction to keep the peace, (*tuenda pacis jurisdictio*.) According to *Fleta*, the liberty of having a view of frank-pledge. But to authorize this meaning, the word, according to *Spelman*, should be written *frisocna*.

FRODMORTEL, *Fromortel*. Sax. [from *freo*, free, and *mortdal*, murder.] In Saxon law. An immunity or freedom granted for committing murder, or manslaughter. This word occurs in an old rhyming charter of King Athelstan to the chapel of St. Wilfrid of Rippon, quoted by *Blount*.

Ilkan of yis stedes sal have pees
Of Frodmortal, and its deeds
Yat yair don is ———

FROM, (Lat. *a*, *ab*.) as a word expressive of *time*, is construed both inclusively and exclusively, though generally in the latter sense. The old rule was, that when used to denote the commencement of a term, as a lease *from* such a day, it was to be taken exclusively. *Co. Litt.* 46 b. 5 *Co.* 1, *Clayton's case*. *Id.* 94 b, *Barwick's case*. But the day of a demise is now ordinarily considered as inclusive. 4 *Ken's*

Com. 95, note. In other cases, however, as where a party is allowed a certain time *from* such a day, the old rule prevails, and the day is excluded. 4 *Wash. C. C. R.* 232. See 9 *N. Hamp. R.* 304. See *Computation, Time*. A distinction was formerly made between the expressions in a lease "from the date," (*a datu*.) and "from the day of the date," (*a die datu*;) the former being held to include the day of date, the latter to exclude it. 2 *Salik.* 413, 626. 1 *Ld. Raym.* 473, 480. 2 *Id.* 1242. *Hargr. Co. Litt.* Note 281, lib. 1. But this distinction is not now observed, it having been held that the words "from the date," or "from the day of the date," mean either inclusive or exclusive, according to the context or subject matter. 5 *Co.* 2. *Consp.* 714. 5 *Term. R.* 287. 2 *Crabb's Real Prop.* 248, § 1301. See 1 *Hilliard's Real Prop.* 218.

From, as expressive of *place*, is always taken exclusively. Thus, "from a port" is exclusive of the port. The *terminus a quo* is the boundary line of the port, and when a vessel passes from that, she sails *from* the port, and is on the high sea. *Story, J.* 2 *Mason's R.* 130, 131. See *At and from*.

FRUCTUARIUS. Lat. [from *fructus*, fruit, or increase.] In the civil law. One who had the usufruct of a thing; i. e. the use of the fruits, profits, or increase, as of land or animals. *Inst.* 2. 1. 36, 38. *Id.* 2. 9. 4, 5. *Bracton* applies it to a lessee, fermor or farmer of land, or one who held lands *ad firmam*, for a farm, or term. *Bract.* fol. 261. So *firmarius sive usufructuarius*. *Id.* fol. 165.

FRUCTUS. Lat. In the civil law. Fruit, fruits; produce; profit or increase; the organic productions of a thing. 1 *Mackeld. Civ. Law*, 156, § 154. *Fructus fundi*; the fruits of land. *Inst.* 2. 1. 35. *Fructus pecudum*; the produce of flocks, or herds. *Inst.* 2. 1. 37. This included milk, hair and wool. *Dig.* 22. 1. 28.

The right to the fruits of a thing belonging to another. *Dig.* 7. 1. 33.

The compensation which a man receives from another for the use or enjoyment of a thing, such as interest or rent. *Dig.* 5. 3. 29. *Id.* 22. 1. 34. 1 *Mackeld. Civ. Law*, ub. sup. But see *Dig.* 50. 16. 121.

FRUCTUS CIVILES. Lat. In the civil law. Civil fruits; the profits, returns or compensation which a man receives from another, for the use or enjoyment of a

thing. 1 *Mackeld. Civ. Law*, 157, § 154. *Calv. Lex*. See *Fructus*.

FRUCTUS INDUSTRIALES, (or **FRUCTUS INDUSTRIÆ**) Lat. Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. 1 *Mackeld. Civ. Law*, 156, § 154, Kaufmann's note. 2 *Kames' Equity*, 139. Emblements are so called in the common law. 2 *Steph. Com.* 258. 1 *Chitt. Gen. Pr.* 92. See *Fructus naturales*.

FRUCTUS NATURALES. Lat. In the civil law. Natural fruits. Those fruits or profits of land, or other thing, which are produced solely by the powers of nature, as the fruit of trees, the young, milk and wool of animals. 1 *Mackeld. Civ. Law*, 156, § 154. *Calv. Lex*.

FRUCTUS PENDENTES. Lat. In the civil law. The fruits of a thing, while united with the thing which produces them. Called also *fructus stantes*. *Dig.* 47. 2. 26. 1. *Id.* 24. 3. 7. 15. *Id.* 7. 1. 27, pr. 1 *Mackeld. Civ. Law*, 156, § 154. Considered to be part of the land, (*pars fundi*.) *Dig.* 6. 1. 44.

FRUCTUS SEPARATI. Lat. In the civil law. Separate fruits; the fruits of a thing when they are separated from it. *Dig.* 7. 4. 13. 1 *Mackeld. Civ. Law*, *ub. sup.*

FRUGES. Lat. In the civil law. Fruits; produce of lands. The Roman writers differed in opinion as to the meaning of this word. Julianus held that it included all things used as the food of man, (*quibus homo vescatur*;) which Paulus pronounces to be a mistake, as flesh, birds, wild animals and tree-fruits, (*poma*;) were not *fruges*. *Dig.* 50. 16. 77.

In the sense of *reditus*, (return from land,) *fruges* included the profits of vines, underwood, (*silva cadua*;) chalk-pits and stone-quarries. *Id. ibid.*

As distinguished from *frumentum*, *fruges* signified esculents which grew in a pod, (*siliqua*;) such as lupines and beans. *Id. ibid.*

FRUITS OF CRIME. In the law of evidence. Material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject matter of the crime. *Burr. Circ. Evid.* 445. 3 *Benth. Jud. Evid.* 31.

FRUMENTUM. Lat. In the civil law. Grain. That which grows in an ear, (*arista*.) *Dig.* 50. 16. 77.

FRUMGYLD. Sax. [from *form*, or *formam*, first, and *gyld*, a payment.] In Saxon law. The first payment made to the kin of a slain person, in recompense of his murder. *LL. Edmundi*, c. ult. *Termes de la Ley*. *Cowell*.

FRUMSTOLL. Sax. [from *form*, or *formam*, first, and *stol*, a seat.] In Saxon law. A chief seat, or mansion-house. *LL. Inæ*, c. 38. *Cowell*.

FRUSCA TERRA. L. Lat. In old records. Uncultivated and desert ground. 2 *Mon. Angl.* 327. *Cowell*.

FRUSSARE. L. Lat. In old records. To break up. *Frussare terram*; to break or plough up new ground. *Cowell*.

FRUSSURA. L. Lat. [from Fr. *frisure*.] In old records. A breaking, or breaking up. *Frussura domorum*; house-breaking. *Gervas. Doroborn. A. D.* 1195. *Cowell*. *Frussura terra*; new broke land, or land lately ploughed up. 2 *Mon. Angl.* 394. *Cowell*. *Blount*.

FRUSTRA. Lat. In vain; to no purpose. *Frustra* [*vana*] est potentia quæ nunquam venit in actum. That power is to no purpose which never comes into act, or which is never exercised. 2 *Co.* 51.

Frustra agit qui iudicium prosequi nequit cum effectu. He sues to no purpose, who cannot prosecute his judgment with effect, (who cannot have the fruits of his judgment.) *Fleta*, lib. 6, c. 37, § 9.

Frustra feruntur leges nisi subditis et obedientibus. Laws are made to no purpose, except for those that are subject and obedient. *Branch's Princ.*

Frustra fit per plura, quod fieri potest per pauciora. That is done to no purpose by many things, which can be done by fewer. *Jenk. Cent.* 68, case 28. The employment of more means or instruments for effecting a thing than is necessary, is to no purpose.

Frustra legis auxilium invocat [quærit] qui in legem committit. He vainly invokes the aid of the law, who transgresses the law. *Fleta*, lib. 4, c. 2, § 3. 2 *Hale's P. C.* 386. *Broom's Max.* [209.]

Frustra petis quod mox es restiturus. In vain you ask that which you will have immediately to restore. 2 *Kames' Equity*, 104. 5 *Man. & Gr.* 757. A maxim of the Roman law, another form of which is, *Frustra petis quod statim alteri reddere cogeris*.

Vainly you ask that which you will immediately be compelled to restore to another. *Jenk. Cent.* 256, case 49. 1 *Story's Equity Jur.* § 664. A party will not be aided to recover money which he may be immediately compelled to refund to those from whom he claims it. This maxim has been applied to the case of a partner seeking to recover a demand against the partnership firm of which he is a member. *Story on Partn.* § 221. 5 *Man. & Gr.* 757, arg.

FRUSTRA PROBATUR, QUOD PROBATUM NON RELEVAT. That is proved to no purpose, which, when proved, does not help. *Halkerst. Max.* 50.

FRUSTRUM TERRÆ. L. Lat. In old English law. A piece or fragment of land. A piece of land left over, after the measurement of a field, (*residuum quiddam præter campum mensuratum.*) *Spelman.*

A large piece of land lying by itself, and unconnected with any field, town or manor. *Domesday.* *Spelman* thinks it should be *frustum.* *Co. Litt.* 5 b.

FRUTECTUM. Lat. In old records. A place overgrown with shrubs and bushes. *Spelman.* *Blount.*

FRUTOS. Span. [from Lat. *fructus*, q. v.] In Spanish law. Fruits; products; produce; grains; profits. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

FRYTH, Fyrnth. Sax. In Saxon law. A taking in; the affording harbor and entertainment to anyone. *Wharton's Lex.* Properly *firm* or *firma.* See *Flemensfirma.*

FRYTHER. Sax. In old English law. A plain between woods. *Co. Litt.* 5 b. *Domesday.*

An arm of the sea, or a strait between two lands, (from Lat. *fretum*, a strait.) *Cowell.* *Camd. Brit.* cited *ibid.*

FU. L. Fr. I was. *Kelham.*

FU, Fus. L. Fr. Fire. *Kelham.*

FUAGE. [from Fr. *fouage*; L. Lat. *foecagium*, from *focus*, a hearth.] In old English law. A tax laid upon the fireplace, hearth, or chimney. Mentioned in *Domesday* as paid by custom to the king, for every chimney in the house. 1 *Bl. Com.* 324. Afterwards called hearth money, or hearth silver, and chiminage. *Id. ibid.* *Spelman.*

FUAYL, Fouoyle, Fowalles. L. Fr. Fuel. *Kelham.*

FUER. L. Fr. [from Lat. *fugere*.] In old English law. To fly or flee; to chase or drive. *Kelham.* L. Fr. *Dict.*

Flight. *Fuer en fait*; flight in fact, was when a man did apparently and corporally flee. *Fuer en ley*; flight in law, was when, being called in the county court, he failed to appear; for this was flight in interpretation of law. *Staundf. Pl. Cor.* lib. 3, c. 22. *Cowell.*

FUERINT. Lat. [sum, esse, to be.] In old English law. This word, in the phrase *si quæ fuerint*, was sometimes understood in the present and sometimes in the future tense. *Perk.* ch. 12, ss. 741—743.

FUERO. Span. [from Lat. *forum*, q. v.] In Spanish law. A law; a code. See *Fuero Juzgo.*

A general usage or custom of a province, having the force of law. *Las Partidas*, part. 1, tit. 2, l. 7. *Ir contra fuero*; to violate a received custom. *Schmidt's Civ. Law*, Introd. 64.

A grant of privileges and immunities. *Conceder fueros*; to grant exemptions. *Id.* A charter granted to a city or town. Also designated as *cartas pueblas.* *Id.*

An act of donation made to an individual, a church, or convent, on certain conditions. *Id.*

A declaration of a magistrate, in relation to taxation, fines, &c. *Id.*

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, &c. *Id.*

A place where justice is administered. *Id.*

A peculiar *forum*, before which a party is amenable. *Id.*

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as *fuero ecclesiastico*, *fuero militar.* *Id.*

FUERO JUZGO. Span. [Lat. *Forum Judicium.*] The title of the most ancient code of the laws of Spain, composed in the seventh century, during the empire of the Visigoths in that country. It is the oldest code of Teutonic origin which has preserved its influence to this day. *Schmidt's Civ. Law*, Introd. 28, 29. *Barringt. Obs. Stat.* 8, note [r]. For an analysis of this code, see *Schmidt's C. L.* 30, *et seq.*

FUERO REAL. Span. The title of a code of Spanish law promulgated by Alphonso the Learned, (*el Sabio*), A. D. 1255. It was the precursor of the *Partidas.* *Schmidt's Civ. Law*, Introd. 67.

FUERO VIEJO. Span. The title of a compilation of Spanish law, published about A. D. 992. *Schmidt's Civ. Law*, Introd. 65.

FUGA. Lat. In old English law. Flight. *Fugam facere*; to make flight; to flee. *Fugam fecit*; he has made flight; he has fled. *Si aliquo predictorum modorum fugam fecerint*; if they shall have fled in any of the aforesaid ways. *Bract.* fol. 6 b. See *Fleta*, lib. 1, c. 25, § 7.

FUGA CATALLORUM. L. Lat. In old English law. A drove of cattle. *Blount.*

FUGACIA. L. Lat. [from *fugare*, q. v.] In old English law. A chase. The same as *chace*, (q. v.) *Spelman.* *Blount.*

FUGACIO, Fugatio. L. Lat. [from *fugare*, q. v.] In old English law. The hunting of wild animals in forests, chases and parks. The liberty of hunting. *Et cives habeant fugaciones suas ad fugandum, &c.* *Chart. Libert. Hen. I. Civ. Lond.* *Spelman.* *Fugatio forestæ*; the drift of the forest. *Blount.*

FUGAM FECIT. L. Lat. (He made flight; he fled.) In old English law. A flying for fear of an offence, and which was the occasion of forfeiting the party's chattels. *Finch's Law*, lib. 3, c. 15. See, in record, 4 *Mod.* 288. An inquisition finds a *fugam fecit.* *Freem.* 419. See *Fuga.*

FUGARE. L. Lat. [from *fuga*, flight.] In old English law. To chase or hunt; to course a deer; to drive; (*feras cursu premere et venari.*) *Spelman*, voc. *Fugacia.* 2 *Show.* 489. *Fugare et refugare catalla*; to drive cattle to and fro. *Blount.*

FUGATOR. L. Lat. [from *fugare*, q. v.] In old English law. A driver. *Fugatores carucarum*; drivers of wagons. *Fleta*, lib. 2, c. 78. See *Caruca.*

FUGITATE. In Scotch practice. To outlaw, by the sentence of a court; to outlaw for non-appearance in a criminal case. 2 *Alison's Crim. Pr.* 350.

FUGITATION. In Scotch practice. Outlawry. 2 *Alison's Crim. Pr.* 350. 1 *Swinton's R.* 302. See *Fugitate.*

FUGITIVUS. Lat. [from *fugere*, to fly.] In the civil law. A fugitive; a runaway slave. *Dig.* 11. 4. *Cod.* 6. 1. See the various definitions of this word, in *Dig.* 21. 1. 17. And see *Id.* 50. 16. 225.

FUGITIVUS. Lat. [L. Fr. *futyf*; Sax. *flyman*.] In old English law. A fugitive. *Fugitivi*; (Sax. *flymen*.) fugitives. One who fled after committing a felony. See *Bona fugitivorum.*

A villein or bondman who left his lord without the intention of returning. *Cum consuetudinem revertendi habere desierint, incipiunt esse fugitivi, ad similitudinem cer-*

vorum domesticorum; when they have discontinued the habit of returning, they begin to be fugitives, like tamed deer. *Bract.* fol. 6 b.

FUGITIVE. [from Lat. *fugitivus*.] One who, after committing an offence, flees from justice, that is, takes to flight in order to escape punishment. *Constit. U. States*, Art. IV. Sect. II. 1 *Kent's Com.* 36—38, and notes. 2 *Id.* 32, note. See *United States Digest*, Fugitives from justice.

A slave who has escaped from his master. 2 *Kent's Com.* 32, and notes. 1 *Id.* 404, note. See *Fugitivus.*

FUIZ. L. Fr. *Son.* *Yearb.* T. 1 Edw. II. 14, 15.

FULBORAN. Lomb. Legitimate; one born without defect; full born. *Si quis dereliquerit filium legitimum unum, quod est fulboran, et filios naturales unum aut plures.* *LL. Longob.* lib. 2, tit. 14, l. 2. *Spelman.*

FULFREA, Fulfreal. Lomb. Absolutely or entirely free; full free. *Vadant liberi absoluti et fulfreales*; they shall go absolutely free, and fulfreal. *LL. Longob.* lib. 1, tit. 32, l. 5. *Spelman.*

"FULL," held to be synonymous with complete. A "full" answer is as extensive a term, in describing one which is ample and sufficient, as though the term "complete" had been superadded. *Ligon, J.* 22 *Alabama R.* 817.

FULL AGE. [L. Fr. *pleine age*; L. Lat. *plena ætas*.] In common law. The age of twenty-one years, in males and females. *Litt.* sect. 259. 1 *Bl. Com.* 463. Sometimes simply called *age*. See *Age*.

In the civil law. The age of twenty-five years, in males and females. *Inst.* 1. 23, pr.

* * * The common law period of full age is generally adopted in the United States. In Vermont and Ohio, however, females are deemed of age at eighteen. 2 *Kent's Com.* 233. 9 *Vermont R.* 42, 79. It is followed, also, in Louisiana and France. *Code Civil*, Art. 388, 488. *Civil Code of Louisiana*, Art. 41. 93. The rule of the civil law is followed, as to males, in Spain and Holland. *Institutes of Civil Law of Spain*, b. 1, tit. 1, ch. 1, sec. 3. *Vander Linden's Institutes of the Laws of Holland*, b. 1, ch. 5, sec. 7. Full age is deemed to be completed on the beginning of the day preceding the anniversary of the person's birth. 1 *Salk.* 44. 1 *Ld. Raym.* 480. 2 *Salk.* 625. 1 *Bl. Com.* 463. 2 *Steph. Com.* 332. 2 *Kent's Com.* 233. Anciently, however, the heir of a knight's fee was not deemed of age

until he had completed his twenty-first year, and had reached the twenty-second. (*De feodo militari habebit hæres plenam aetatem cum xxi. annum impleverit et xxii. attigerit.*) *Bract.* fol. 86, 86 b. The son and heir of a socman, on the other hand, was deemed of age when he had completed fifteen years. *Id. ibid.* The reason of this difference was that greater maturity and strength, both of mind and body, were requisite for bearing arms, and performing the other duties of military or knight's service. *Id. ibid. Litt.* sect. 103, 104. *Co. Litt.* 78 b.

FULL BLOOD, (or **WHOLE BLOOD**.) A term of relation, denoting descent from the same couple. Brothers and sisters of full blood are those who are born of the same father and mother, or, as Justinian calls them, *ex utroque parente conjuncti.* *Nov.* 118, c. 2, 3. 1 *Mackeld. Civ. Law*, 140, § 132. The more usual term in modern law is *whole blood*, (q. v.)

FULL COURT. In practice. A term applied to a court sitting *in banc*, and implying, strictly, the presence of all the judges.* 3 *Chitt. Gen. Pr.* 2. The term *full bench* is frequently used.

FULL DEFENCE. In pleading. The formula of defence in a plea, stated at length and without abbreviation, thus: "And the said C. D. by E. F. his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," &c. *Steph. Pl.* (Am. ed. 1834,) ch. i. sect. vii. rule v.

FULL LIFE. Life in fact and in law. See *In full life*.

FULL PROOF. [Lat. *plena probatio.*] In the civil law. Proof by two witnesses, or a public instrument. *Hallifax, Anal.* b. 3, ch. 9, num. 25, 30. 3 *Bl. Com.* 370.

FULLO. Lat. In the civil law. A fuller. *Si fullo polienda curandave—vestimenta mercede certa constituta acceperit*; if a fuller have received garments to smooth [scour] or dress, for a certain fixed price. *Inst.* 4. 1. 15. *Dig.* 4. 9. 5, pr. *Id.* 19. 2. 13. 6.

FULLUM. L. Lat. In old English law. *Fullum aqua*; a stream of water; a fleam, [fiume,] such as comes from a mill. *Blount.*

FUMAGE. [L. Lat. *fumagium*, from *fumus*, smoke.] In old English law. The same as *fuge*, or smoke farthings. 1 *Bl. Com.* 324. See *Fuge*.

FUNCTUS. Lat. [from *fungor*, to discharge an office.] One who has performed or discharged some function. *Functus officio*; one who has performed some office assigned to him. *Platt, J.* 15 *Johns. R.* 446. One whose official authority has ceased. *Story, J.* 1 *Gallison's R.* 69, 74. Lord Ellenborough, 11 *East*, 194. *Cum semel officio tali functus fuerit*; when he shall have once discharged such office. *Fleta*, lib. 6, c. 37, § 14. This phrase strictly is applicable only to persons, but is sometimes applied to things, as to the seal of a writ, the endorsement of a commercial instrument, and the like. 19 *Johns. R.* 170. *Milla, J.* 3 *A. K. Marshall's (Ky.) R.* [324.] 1166. *Wilde, J.* 4 *Metcalf's R.* 343, 345. 3 *Jones' Law R.* 492.

FUNDAMUS. L. Lat. [from *fundare*, to found.] We found. One of the words by which a corporation may be created in England. 1 *Bl. Com.* 473. 3 *Steph. Com.* 173.

FUNDARE. Lat. In old pleading. To found, or establish. A term formerly used to denote the supporting a plaintiff's or demandant's count or declaration, (*intentio* or *querela*), by showing the facts and circumstances upon which his demand was founded. *Debet petens proponere intentionem suam, secundum formam brevis, et fundare eam sic: quod pater vel mater vel alius antecessor suus fuit seysitus, &c.*; the demandant ought to propound his count, according to the form of the writ, and to establish it thus: that his father or mother or other ancestor was seised, &c. *Bract.* fol. 255 b. *Non sufficit simpliciter proponere intentionem suam, sic dicendo, Peto tantam terram ut jus meum, nisi sic illam fundaverit quod doceat ad ipsum jus pertinere, et per quam viam et per quos gradus jus ad ipsum debeat descendere*; it is not enough to simply propound his count, by saying thus: "I demand so much land as my right," unless he so found or establish it as to show that the right belongs to him, and by what way and by what degrees the right ought to descend to him. *Id.* fol. 372 b. And see *Id.* fol. 183 b, 184, 314, 324 b, 261 b, 319 b.

To found a corporation; to give the necessary revenues for that purpose; to incorporate. 10 *Co.* 33, *The case of Sutton's Hospital.* See *Fundamus*, *Fundator*.

FUNDATIO. Lat. [from *fundare*, to found.] A founding, or foundation. *Fun-*

datio incipiens; the incipient foundation; the incorporation of a college or hospital. *Fundatio perficiens*; the perfecting foundation; the dotation or endowment of it with funds. 10 Co. 33. 1 Bl. Com. 481.

FUNDATOR. Lat. [from *fundare*, to found.] A founder. *Fundator incipiens*; the incipient founder of a corporation; the king or state by whom it is incorporated. *Fundator perficiens*; the perfecting founder, the donor or endower of the institution with funds. 2 Kent's Com. 303.

FUNDATOR. Lat. [from *fundere*, to pour or fuse.] In old English law. A founder; a caster or melter of metals. *Fleta*, lib. 1, c. 20, § 132.

FUNDUS. Lat. In civil and old English law. Land or ground generally; (*omne quidquid solo tenetur—quod terra se tenet.*) *Dig.* 50. 16. 115. *Id.* 50. 16. 60. *Id.* 19. 1. 17. *Qui alienum fundum ingreditur, venandi aut aucupandi gratia, potest à domino, si is praverit, prohiberi ne ingrediatur*; he who enters [or offers to enter] another's ground for the purpose of hunting or fowling, may be prevented by the owner from entering, if he foresee the act. *Inst.* 2. 1. 12. *Dig.* 41. 1. 3. 1. *Bract.* fol. 56. 3 Bl. Com. 209. *Si arbor mea in vicini fundo radices egerit*; if my tree throws out roots into my neighbor's land. *Bract.* fol. 10.

Land, including buildings generally. *Fundi appellatione omne ædificium et omnis ager continetur.* *Dig.* 50. 16. 211. This passage is quoted by Lord Coke. 4 Co. 87.

A farm. *Co. Litt.* 5 a.

The bottom, or foundation of a thing. *Fundus maris*; the bottom of the sea. *Schultes' Aquatic Rights*, 85, 127.

FUNGIBLE THINGS. [Lat. *res fungibiles*.] In the civil law. Things which may be furnished or restored in kind (*quæ functionem recipiunt in genere*;) as distinguished from specific things. A barbarous term, supposed to have originated in the use of the words *functionem recipere*, in the Digests. *Dig.* 12. 1. 2. 1 *Mackel-dey's Civil Law*, 153, § 148. Sometimes confined to movable things which may be weighed, counted or measured, or which consist in, or may be estimated by weight, number or measure, (*quæ pondere, numero, vel mensura constant.*) *Id.* *ibid.* In this sense, the word *fungible* is still used in Scotch law. 1 *Bell's Com.* 255, (5th ed.)

Story on Bailm. § 284. *Bell's Dict.* Dr. Hallifax describes *res fungibiles* as consumable goods, or things that perish in the using. *Hallifax, Anal.* b. 2, c. 3, 15. According to Dr. Taylor, they are called *fungibiles, quia una alterius vice fungitur*; because one takes or occupies the place of another. *Tayl. Civ. Law*, 476.

FUNUS. Lat. In the civil and old English law. A funeral. *Dig.* 11. 7. *Impensa funeris*; funeral expenses. *Id.* 11. 7. 18. Called *expensæ circa funus.* *Fleta*, lib. 2, c. 57, § 10.

FUR. Lat. In civil and old English law. A thief. *Inst.* 4. 1. 3. *Bract.* fol. 105. *Fur diurnus*; a day thief. *Bract. ub. sup.* *Fleta*, lib. 1, c. 16, § 6. *Fur nocturnus*; a night thief. *Id.* *ibid.* *Bract. ub. sup.* Thieves (*fures*) are defined to be those who steal secretly and without arms. *Nov.* 134, c. 13.

FUR MANIFESTUS. Lat. In the civil law. A manifest thief. A thief who is taken in the very act of stealing, (*qui in ipso furto, Gr. ἐν αὐτοφώρῳ, deprehenditur*;) or in the place where he committed it, (*eo loco quo furtum fit.*) *Inst.* 4. 1. 3. *Dig.* 47. 2. 3. See *Furtum*.

FURCA. [L. Fr. *furche*.] A fork. See *Furcare*.

A gallows or gibbet. *Bract.* fol. 56. See *infra*.

FURCA ET FLAGELLUM. L. Lat. In old English law. Gallows and whip. *Tenure ad furcam et flagellum*; tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb. *Cowell. Placit. M. T.* 2 *Johan. Rot.* 7, cited *ibid.*

FURCA ET FOSSA. L. Lat. In old English law. Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves; viz. men by hanging, women by drowning. *Spelman. Cowell.* See *Fossa*.

FURCARE. L. Lat. [from *furca*, a fork; L. Fr. *fourcher, forcher*.] In old practice. To fork or divide. To divide in casting essoins. *Hengham, Magna*, c. 9. *Cowell.*

To move or pitch with a fork. *Furcare ad tassum.* *Cowell.*

FURCHE. L. Fr. A gallows. *Britt.* c. 20.

FURFUR. L. Lat. In old English law. Bran. *Fleta*, lib. 2, c. 10; c. 73, § 19; c. 83.

FURIER. L. Fr. February. *Kelham.*

FURIGELDUM. L. Lat. [from *fur*, a thief, and *geldum*, a payment.] A fine or mulct paid for theft.

FURIOSITY. In Scotch law. Madness. *Bell's Dict.*

FURIOSUS. Lat. [from *furere*, to rage.] A madman or lunatic; one violently insane. *Furiosus nullum negotium gerere potest, quia non intelligit quod agit*; a madman can transact no business, because he does not understand what he does. *Inst.* 3. 20. 8. See *Fleta*, lib. 2, c. 56, § 19. *Tales* [furiosi] *non multum distant à brutis quæ ratione carent*; such are not far removed from brutes, who have no reason. *Bract.* fol. 420 b. 4 Co. 126. See *Fleta*, lib. 6, c. 50, § 1.

Furios nulla voluntas est. A madman has no will. *Dig.* 50. 17. 40. *Broom's Max.* [231.]

Furiosus absentis loco est. A madman is the same with an absent person, (that is, his presence is of no effect.) *Dig.* 50. 17. 24. 1.

Furiosus nullum negotium contrahere potest. A madman can contract nothing, (can make no contract.) *Dig.* 50. 17. 5.

Furiosus sole [or *solum*,] **furere punitur.** A madman is punished by his madness alone; that is, he is not answerable or punishable for his actions. *Co. Litt.* 247 b. 4 *Bl. Com.* 24, 396. *Broom's Max.* 9, [11.]

FURK. L. Fr. But. *Kelham*

FURMENT. L. Fr. Wheat. *Yearb.* M. 10 Edw. III. 50.

FURNAGIUM. L. Lat. [from *furnus*, an oven; L. Fr. *fournage*.] In old English law. A tribute or tax paid to a lord by his tenants, for the use of his oven. *Blount. Spelman.*

A baker's fee. *Fleta*, lib. 2, c. 10.

FURNITURE. See *Household furniture.*

FURNUS. Lat. An oven. See *Secta ad furnum.*

FURST AND FANDONG. Sax. Time to advise or take counsel. *LL. Hen.* I. c. 46. *Whishaw.* *Spelman* gives this phrase without explanation.

FURTA. A word used in old records, which Cowell thinks should be *furca*, (q. v.)

FURTHER ASSURANCE, *Covenant for.* One of the usual covenants entered into by a vendor, for the protection of the vendee's interest in the subject of the purchase. It seems to be confined to an as-

surance by way of conveyance, and not to extend to further obligations to be imposed on the covenantor by way of covenant. 2 *Sugden on Vendors*, 98, 108. *Wharton's Lex.* It is one of the usual covenants in common warranty deeds, and imports that the grantor will execute any such further instruments as may be found necessary to assure the title.

FURTIVE. Lat. In old English law. Stealthily; by stealth. *Fleta*, lib. 1, c. 38, § 2.

FURTUM. Lat. In civil and old English law. Theft. *Furtum est contractatio fraudulosa, lucri faciendi gratia, vel ipsius rei, vel etiam usus ejus, possessionisve*; theft is the fraudulent handling or meddling with a thing, or the use or possession of it, for the sake of making gain. *Inst.* 4. 1. 1. *Dig.* 47. 2. 1. 3. *Bracton* has borrowed some of the terms of this definition, but has otherwise considerably modified it. *Furtum est contractatio rei alienæ fraudulentæ, cum animo furandi, invito illo domino cujus res illa fuerit*; theft is the fraudulent handling of another's property, with the intention of stealing it, against the will of its owner. *Bract.* fol. 150 b. This has been copied by *Fleta*, (with the omission of the single word *illo*), and is quoted from the latter writer by Lord Coke. *Fleta*, lib. 1, c. 38. 3 *Inst.* 107. See *Theft, Contractatio.*

A thing stolen. *Si furtum in manu, vel sub potestate alicujus invenitur*; if the thing stolen be found in the hand or under the power of another. *Bract.* fol. 151 b.

Several derivations of the word *furtum* are given in the civil law, viz.: from *furvum*, black or dark, because theft is committed privately, and generally in the night; or from *fraus*, fraud; or from *ferendo* or *auferendo*, taking away; or from the Gr. *ῥάπτω*, theft. *Inst.* 4. 1. 2. *Dig.* 47. 2. 1.

FURTUM GRAVE. In Scotch law. An aggravated degree of theft, anciently punished with death. It still remains an open point, what amount of value raises the theft to this serious denomination. 1 *Brown's R.* 352, note. See 1 *Swinton's R.* 467.

FURTUM MANIFESTUM. Lat. In civil and old English law. Manifest theft, (Sax. open theft.) *Furtum manifestum est ubi latro deprehensus est, seorsus de aliquo latrocinio, scilicet hondhabende et bacberende*; manifest theft is where a thief is

caught with any thing stolen in his possession, that is to say, having it in his hand, or carrying it on his back. *Bract. fol. 150 b.* See *Fleta*, lib. 1, c. 38, § 1. According to the civil law, the thief must be taken before he reached the place where he intended to carry or deposit the thing stolen, in order to constitute manifest theft. *Inst. 4. 1. 3.* See *Fur manifestus*.

FURTUM CONCEPTUM. Lat. In the civil law. Received theft; the offence of receiving stolen goods. *Conceptum furtum dicitur cum apud aliquem, testibus præsentibus, furtiva res quæsitæ et inventa sit*; theft is called *conceptum*, when a thing stolen is searched for, and found upon some person, in the presence of witnesses. *Inst. 4. 1. 4.*

FURTUM OBLATUM. Lat. In the civil law. Offered theft. *Oblatum furtum dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit*; theft is called *oblatum*, when a thing stolen is offered to you by any one, and found upon you. *Inst. 4. 1. 4.*

FUSTIS. Lat. In old English law. A staff, used in making livery of seisin. *Bract. fol. 40.*

A baton, club or cudgel. *Fuste et scuto defendere*; to defend with baton and buckler; that is, in the *duellum*, or combat. *LL. Longob. lib. 1, tit. 25, l. 76. Spelman.*

FUSTIGATIO. L. Lat. [from *fustis*, q. v.] In old English law. A beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. *Bract. fol. 104 b, lib. 3, tr. 1, c. 6.* See *Spelman*, voc. *Fustuarium supplicium*.

FUTURE DEBT. In Scotch law. A debt not yet due. *Bell's Dict.*

FUTURE ESTATE. An estate to which a person is entitled *in futuro*; an estate in expectancy.* 1 *Steph. Com.* 289. Of expectancies, there are at the common law two sorts; one called a *reversion*, the other called a *remainder*. *Id. ibid.*

In New-York, estates in expectancy have been divided into future estates and reversions; a future estate being defined "an estate commencing at a future day," or more fully, "an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time." 1 *Rev. St. [723,]* 718, §§ 9, 10.

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FUTURELY is used in opposition to "presently," by Treby, C. J. 12 *Mod.* 286.

FUTURI. Lat. In old conveyancing. Future persons; those who are to be, or are hereafter to live. *Sciant præsentēs et futuri, quod ego, &c.*; Know present and future persons, (Know those who are present, and those who are to be,) that I, &c. *Bract. fol. 34 b.* This reference to the future is of constant occurrence in ancient deeds, and variously expressed; as, *Noverint omnes visuri vel audituri, &c.*; Know all men that shall see or hear, &c. *Blount, voc. Covenant. Old covenant, ibid.* So, in modern deeds poll, "To all to whom these presents shall come," &c.

FUTYF, Futyfs, Fufise, Fuy. L. Fr. [from Lat. *fugitivus*, q. v.] A fugitive from justice. *Britt. c. 1.*

A fugitive or runaway bondman, or villain. *Id. c. 31.*

FYLE, Ffyfe. Sc. In old Scotch practice. To declare or find guilty; literally, to defile; to make or declare foul; as *clenge* was to acquit, literally to clean or cleanse. "Swa that he quha, of his conscience can nocht clenge, he of necessitie mon fyle." 1 *Pitcairn's Crim. Trials*, part 1, p. 314. "The assyise in ane voce ffylis the said R. W." 2 *Id.* 73.

FYLIT. Sc. In old Scotch practice. Fyled; found guilty. See *Fyle*.

FYN, Feyn. L. Fr. Fine; a fine. *Britt. cc. 11, 21. End. Kelham.*

FYNDERINGA. L. Lat. or Sax. In old English law. An offence mentioned in the laws of King Henry I. (c. 11,) the fine or compensation for which was reserved to the king. *Spelman* conjectures it to have been the *finding* of treasure, or concealment of treasure trove. But *Cowell* says the true reading is *fyrderinga*, or *fyrdering*, which signified a going out to war, or a military expedition at the king's command, the refusal or neglect of which was punished with a *firdwite*, or mulct, at the king's pleasure. But *fyrderinga*, in the passage above referred to, is clearly enumerated among crimes, (*incendium, hæmoccne, forstall, fynderinga, flemen firma*,) as a distinct thing from the offence of one *qui firdfare suspenderit*, (who neglected to go out to war,) which is mentioned afterwards in the same chapter. *Spelman*, voc. *Fird*.

FYRD, Fird, Ferd. Sax. In Saxon law. An army; a military expedition; military service. *Fyrd ships. LL. Ethel-*

red. v. § 27. 1 *Spence's Chancery*, 9, note. See *Firdfare*, *Firdwite*.

FYW. L. Fr. Fire. *Kelham*.

G.

G, in Law French, is frequently used at the beginning of words, to express the English W; as *Gage* for *Wage*, *Gainage* for *Wainage*, *Gales* for *Wales*, *Gard* for *Ward*, *Garranty* for *Warranty*, *Garrene* for *Warren*, *Gast* for *Waste*, and the like.

GABEL, *Gavel*. [L. Lat. *gabella*, *gabellum*, *gabulum*; from Sax. *gafol*, *gafel*, qq. v.] In old English law. A tax, duty, impost, custom or tribute; a rent or service. *Cowell*.

GABELLA. L. Lat. [Fr. *gabelle*.] In old European law. A tax or duty on merchandise, or personal property. *Spelman*. *Cowell*.

A tax on salt in France. *Spelman*. *Brande*.

Gabellatus. A collector of taxes or customs. *Spelman*.

GABLUM, *Gabellum*. L. Lat. [from Sax. *gafol*, *gafel*, qq. v.] In old English law. A rent. *Domesday*. LL. Inæ, c. 66. *Hagas reddentes novem libras de gablo*; houses paying nine pounds of rent. *Camd. Brit.* 213. *Cowell* thinks it was a rent imposed by the power and will of the lord, as distinguished from a rent paid by agreement.

Interest, or usury; the profit of money. *Spelman*.

Gablatores. Persons who paid *gabel*, rent or tribute. *Domesday*. *Cowell*.

GABLUM, *Gabulum*, *Gabula*. L. Lat. In old records. The head, end or extreme part of a house or building; the *gable*, or gable end. *Kennett's Gloss*. *Cowell*.

GAFOL, *Gafole*, *Gafel*, *Gaful*. Sax. Rent, or income; tax, tribute or custom. *Bers gafol*; a rent payable in barley. *Gafol land* or *gaful land*; rented land; land letten for rent, (*terra censu*.) *Spelman*.

The profit or gain of money; interest or usury. *Sax. Evang. S. Matt.* xxv. 27.

GAFOLGILD. Sax. [from *gafol*, rent, and *gild*, payment.] The payment of rent or income. *Gafolgildenhuse*; a house paying an annual rent. *Spelman*, voc. *Gabella*.

GAGE. L. Fr. and Eng. [from Fr. *gager*, (q. v.) L. Lat. *vadium*.] In old English law. Security; something given to secure the performance of an act. *Mys par gage et plegge*; put by gage and

pledge. *Britt. c.* 27. *Encontre gage et plegge*; against gage and pledge. *Id. ibid.* To put by *gage*, or take *gage*, was to take certain goods of a defendant, which he forfeited if he did not appear. 3 *Bl. Com.* 280. *Pledge* was a person taken as a surety. *Id. ibid.* See *Vadium*.

Gage is not generally used in English as a verb, (like the Fr. *gager*,) being converted into *wage* by the common change of *g* into *w*. See *Wage*.

GAGE, *Estates in*. Estates held as security; of which mortgages are the most common examples. See *Mortgage*.

GAGER. L. Fr. [L. Lat. *vadiare*.] In old English law. To give or find security or surety for doing a thing; to wage. *Gager ley*; to wage law; to give security for making it. *Britt. c.* 27. *Thel. Dig.* lib. 12, c. 27. *Et gagea ley de non som*; and waged his law of non-summons. *Yearb.* 14 Hen. VI. 22. *Gager deliverance*; to gage or wage deliverance; to give security for the delivery. *F. N. B.* 67, 74.

The giving of security; wager. *Gager de ley*; wager of law. *Crabb's Hist.* 295. See *Wager of law*, *Ley gager*.

GAGES, *Gaies*. L. Fr. *Wages*. *Britt.* c. 30. *T. Jon.* 47.

GAHIN, *Gaing*, *Gaaing*. L. Fr. Autumn. *Kelham*.

GAIGNAGE, *Gaignere*. L. Fr. *Wainage*. *Kelham*. See *Gainage*.

GAIGNARIE. L. Fr. *Gainery*; husbandry. *Kelham*.

GAIGNER. L. Fr. To till or cultivate; to obtain by husbandry. *Kelham*.

GAILLE. L. Fr. An old form of *Gaole*, (q. v.) *Kelham*.

GAIN. [L. Fr. *gainer*, q. v.] In old English law. To cultivate or till. See *Gainer*, *Gainage*. Arable land was called *hyde and gain*. *Co. Litt.* 85 b.

GAINAGE. L. Fr. and Eng. [L. Lat. *gainagium*, *wainagium*; L. Fr. *gaignage*, from Fr. *gainer*, to cultivate; or Sax. *wain*, a wain or wagon.] In old English law. Implements of husbandry or plough tackle, including wains or wagons and their furniture for carrying on the work of tillage. *Cowell*. *Blount*. *Et vilain s'avant son gainage*; and the vilain, saving his wainage. *Stat. Westm.* 1, c. 6.

The profit arising from the tillage of land. *Cowell*. *Termes de la Ley*. See *Wainage*.

GAINER, *Gaigner*, *Gayner*. L. Fr. To cultivate, plough or till. *Beasts quous*

gainont son terre; beasts which gain or till his land. *Stat. 51 Hen. III.* cited 2 *Inst.* 132. *Barringt. Obs. Stat.* 58. See *Gayner*.

GAINER, *Gainor*, *Gainure*. L. Fr. Tillage or agriculture; the profit accruing thereby. *Cowell. O. N. B.* fol. 117.

GAINERY. [L. Fr. *gaignarie*.] In old English law. Tillage, or the profit of tillage. *Blount*. See *Gainer*.

GAINOR. In old English law. A sokeman; one who occupied or cultivated arable land. *O. N. B.* fol. 12.

GAIUS. A celebrated Roman jurist, whose Institutes formed the foundation for the Institutes of Justinian. An entire copy of this work was discovered by Niebuhr in 1816. 1 *Mackeld. Civ. Law*, 34, 35. 1 *Kent's Com.* 538, and note.

GAJUM, *Gagium*. L. Lat. In old European law. A thick wood. *LL. Longob.* lib. 1, tit. 25, l. 38. *Spelman*.

GALEA, *Galeia*, *Galeida*. L. Lat. In old records. A piratical vessel; a galley. *Spelman. Phranzes*, lib. 1, c. 36, cited *ibid.* *Pyratæ cum galeis alta maris custodientes*; pirates keeping the high seas with their gallees. *Matt. Paris*, A. D. 1243.

GALENES. In old Scotch law. A kind of amends, assithment, or satisfaction for slaughter. *Reg. Maj.* lib. 4, c. si quis, 37; c. statut, 66. *Skene de Verb. Sign.*

GALES. L. Fr. Wales. *Stat. Westm.* 1, c. 17. Called, also, *Galiz* and *Galiz*. *Yearb. M.* 7 Edw. III. 19. *Keilw.* 154. *North Gales*; North Wales. *Litt. sect.* 265.

GALLIHALPENS, *Gallyhalfpence*. A kind of coin which, with suskins and dotkins, was prohibited by the statute 3 Hen. V. c. 1. 4 *Bl. Com.* 99. 3 *Reeves' Hist.* 261. Said to have been a Genoa coin, brought into England by the Genoese merchants, who trading in *gallies* were called *galley-men*, and the small silver coin they used, *galley halfpence*. *Cowell*. Otherwise interpreted to mean *Gaul's half-pence*. *Blount. Bacon's Works*, iv. 373. According to Mr. Crabb, it was money brought by the Venetians in their gallees. *Crabb's Hist.* 356.

GALLON. [L. Fr. *galon*; L. Lat. *galo*, *jalo*, qq. v.] A measure of capacity, adopted in New-York, as the unit or standard from which all other measures of capacity are to be derived and ascertained. 1 *Rev. St.* [808,] 617, § 11. The gallon for liquids is declared to be a vessel of such

capacity as to contain, at the mean pressure of the atmosphere at the level of the sea, eight pounds of distilled water, at its maximum density. *Id. ibid.* § 13. This is the same as the old English gallon. See *Galo*. The gallon for dry measure is declared to be a vessel of such capacity as to contain, at the mean pressure of the atmosphere at the level of the sea, ten pounds of distilled water, at its maximum density. *Id. ibid.* § 14.

In Pennsylvania, the gallon is made the standard unit of liquid measure, to contain two hundred and thirty-one cubic inches. *Purdon's Dig.* 838, § 2, (ed. 1857.)

GALO, *Galona*. L. Lat. In old English law. A gallon. *Octo libræ faciunt galonem vini, et octo galones vini faciunt bussellum, London*; eight pounds make a gallon of wine, and eight gallons of wine make a bushel, London. *Compositio Mensur.* 51 *Hen. III.* See *Stat. de Pistoribus*, c. 8. *Spelman*. 2 *Ld. Raym.* 824. In *Fleta*, the word is written *jalo*, (q. v.) *Fleta*, lib. 2, c. 12, § 1, 14.

GAMACTA. L. Lat. In old European law. A stroke or blow. *L. Boior.* tit. 2, c. 4, § fin. *Spelman*.

GAMALIS. L. Lat. In old European law. A son or child born in lawful marriage. *LL. Longob.* lib. 2, tit. 55, l. 7. *Spelman*.

A child born of persons betrothed, but not actually married. *Id.*

GAME. All such animals as are *feræ naturæ* and objects of the chase.* 2 *Bl. Com.* 410. *Wharton's Lex.* Defined by a late English statute, (1 & 2 Will. IV. c. 32,) as including hares, pheasants, partridges, grouse, heath or moor game, black game and bustards. 2 *Steph. Com.* 82, 83.

In New-York, *game* includes pheasants, partridges, heath-hens, quails and woodcock. 1 *Rev. St.* [701, 702,] 698, 699.

GAME LAWS. Laws for the preservation of game; usually specifying at what times, by what means, (and, in some cases, by what persons,) certain descriptions of game shall be pursued and taken.* The English game laws have recently been materially modified by statute 1 & 2 Will. IV. c. 32. 2 *Steph. Com.* 82, 83.

GAMING, (or **GAMBLING**.) The act or practice of playing any game, particularly games of hazard; which in certain cases is an indictable offence. *Lewis' U. S. Crim. Law*, 335—348. *Wharton's*

Am. Crim. Law, § 2446, et seq. 1 *Russell on Crimes*, 323. See 1 *N. Y. Rev. St.* [662—664,] 666—668. A professional gambler is incompetent to discharge the duties of executor or administrator. 2 *Selden's R.* 443.

GAMURDRIT. In old European law. Murdered; secretly slain or made away with. *Si servus furtivo modo, supradicto more occisus fuerit, et ita abscondus, quod gemurdrit dicunt*; if a slave be secretly slain in manner aforesaid, and so hid, which they call *gemurdrit*. *L. Boior*, tit. 18, c. 2, § 3.

GANANCIAL PROPERTY. [Spanish *bienes de ganancia*.] In Spanish law. That species of property held by husband and wife in common, which is increased or multiplied during marriage. *White's New Recop.* b. 1, tit. 7, c. 5, §§ 1, 2. See 7 *Texas R.* 6, 7. 15 *Id.* 147.

GANANCIAS. Span. In Spanish law. Gains or profits resulting from the employment of property, held by husband and wife in common. *White's New Recop.* b. 1, tit. 7, c. 5.

GAOL. [L. Fr. *gaole*; L. Lat. *gaola*, qq. v.] A place of confinement or safe keeping.* Commonly defined also as a prison, from which, however, it seems properly to be distinguishable; a *gaol* being a place of temporary confinement, or of confinement for minor offences, or for debt; a *prison* being a place of permanent confinement, and a place of punishment for crimes. Confinement in a *gaol* is, in most cases, with reference to some further proceeding, and does not always import guilt in the party confined. Thus, *gaols* are used for the detention of witnesses, in order to secure their attendance in criminal cases, and for the confinement of persons charged with crime and committed for trial. See 2 *N. Y. Rev. St.* [754,] 632. The same idea of temporary or preliminary confinement is the radical one of the phrase *gaol delivery*, which has been used in criminal law from a very remote period; the *gaols* being by the process of trial delivered of their occupants, who are either wholly discharged if innocent, or punished according to law, if found guilty. See *Gaol delivery*. An essential difference between the terms is also imported in the common expressions "county gaol," and "state prison." The distinction, however, is by no means strictly observed in statute law, *gaol* and *prison* being frequently used as synonymous.

Jail is preferred by Webster as the orthography of this word, *gaol* being considered by him as a corruption. The reverse of this, however, seems to be the truth; *gaols* and *gaols* (qq. v.) being the Law French and the Law Latin forms used constantly and by the earliest writers, while nothing approaching *jail* is to be met with. The forms *gouale* and *guille*, given by Kelham, enable us to trace the corruption from *gaol* to *jail* without much difficulty. See *Gaoler*.

GAOLA. L. Lat. In old English law. A *gaol*. *Bract*, fol. 109, 110. *Fleta*, lib. 1, c. 26, § 4. *Ad gaolam deliberandam*; *ad gaolas deliberandas*; for delivering a *gaol* or *gaols*. *Bract*, ubi supra. *Reg. Jud.* 30. *Committatur gaolas de Fleta*; shall be committed to the *gaol* of the Fleet. *Stat. Westm.* 2, c. 11.

GAOLE. L. Fr. In old English law. A *gaol*. *Envoje à nostre gaole*; sent to our *gaol*. *Britt.* c. 15. *Le pleyntiff soit mys en la gaole, et illoque puny par prison et par fin*; the plaintiff shall be put in the *gaol*, and there punished by imprisonment and by fine. *Id.* c. 100.

GAOLER. The keeper of a *gaol*. *Finck's Law*, b. 1, c. 3, num. 62. The sheriff is considered as the keeper of the *gaol* of his county; the actual keeper being, in contemplation of law, only the sheriff's deputy. 3 *Steph. Com.* 249. 1 *Bl. Com.* 346. 1 *N. Y. Rev. St.* [380, § 75,] 372. § 86. 2 *Id.* [754,] 632.

GAOL DELIVERY. [L. Fr. *deliverance de gaole*.] In criminal law. The delivery or clearing of a *gaol* of the prisoners confined therein, by trying them; the *gaol* being considered as delivered by their acquittal or punishment. *Ad gaolam deliberandam de illis qui in prisons carniuntur*. *Bract*, fol. 110. A commission of general *gaol delivery* is one of the four commissions under which the judges in England sit at the assizes; and it empowers them to try and deliver every prisoner who shall be in the *gaol*, (that is, either in actual custody, or out on bail,) when the judges arrive at the circuit town. 4 *Chitt. Bl. Com.* 270, and notes. 4 *Steph. Com.* 333. 1 *Chitt. Crim. Law*, 145, 146. The higher criminal courts in England and the United States, are called courts of *Oyer and Terminer*, and *general gaol delivery*.

GAOL LIBERTIES (or LIMITS.) A certain extent of ground around or contiguous to a *gaol*, and designated by certain

lines or boundaries, within which the persons confined are allowed to go at large on giving security not to escape; being, in contemplation of law, a mere extension of the gaol itself, as a matter of indulgence to the prisoners.* 6 *Johns. R.* 121. 2 *Term R.* 26.

GARANDIA. L. Lat. A warranty. *Spelman.* See *Garantia*.

GARANTER. L. Fr. To warrant. *Fet Assaver*, §§ 45, 46.

GARANTIA, Garantia, Garantum. L. Lat. [In English law, *warrantia, warrantum*; Lomb. *warens*; Sax. Spec. *warenda, warendatio*; all from the Sax. *waren*, to keep or protect.] In Norman law. A warranty. *Spelman.*

Garantizare. To warrant. *Id.*

Garantus. A warrantor. (Lomb. *warens*; Sax. *warendator*.) *Id.*

GARATHINX. Lomb. In old Lombardic law. A gift; a free or absolute gift; a gift of the whole of a thing. *LL. Longob.* lib. 2, tit. 17, l. 1. *Id.* tit. 16, ll. 1, 3. *Spelman.*

GARAUNT, Garraunt, Garant. L. Fr. In old English law. A party called upon, or who might be called upon to warrant another; a vouchee; a party warranting. *De garaunt vocher*; of warrant voucher; of vouching to warranty. *Britt.* c. 75. *Garaunt que luy est tenu à garaunter*; a warrantor who is bound to him to warrant. *Id. ibid.* *Le garaunt se fist per sa garaunty sicome principal tenaunt*; the warrantor makes himself by his warranty the principal tenant. *Id. ibid.*

GARAUNTER, Garraunter. L. Fr. To warrant. *Garaunter en un son signyfie à defendre le tenaunt en sa seisine, et en un autre sen signyfie que si il ne le defende, que le garaunt luy soit tenu à eschaunges, et de faire son gree à la vaillaunce*; to warrant signifies, in one sense, to defend the tenant in his seisin, and in another sense, it signifies that if the party called upon to warrant do not defend him, he shall be bound to exchange (or recompense) and to make him satisfaction to the value. *Britt.* c. 75.

GARAUNTIE, Garaunty. L. Fr. Warranty. *Britt.* c. 39, 75.

GARAUNTOR. L. Fr. A warrantor; a vouchee. *Britt.* c. 24. *Garaunte*; a warrantee; a person warranted. *Id. ibid.*

GARBA. L. Lat. [L. Fr. *garbe*.] In old English law. A bundle or sheaf. *Blada in garbis*; corn or grain in sheaves. *Reg. Orig.* 96. *Bract.* fol. 209. See

Charta de Foresta, c. 7. *Fleta*, lib. 2, c. 81, § 2. See 1 *Eden*, 336, arg. *Id.* 393, arg. *Garba* means and refers to such grains as, when come to maturity, were usually, or might be bound together, and does not extend to things improper to be bound. Lord Keeper, *Id.* 401, 402.

Garba sagittarum; a sheaf of arrows, containing twenty-four. Otherwise called *scaffa sagittarum*. *Stat.* 2 *Rob. Br.* c. ordinatum est, 27. *Skene de Verb. Sign.*

GARBALES DECIMÆ. Lat. In Scotch law. Tithes of corn, [grain.] *Bell's Dict.*

GARBLE. In old English statutes. To sort or cull out the good from the bad in spices, drugs, &c. *Cowell.* *Blount.* vocc. *Garbling, Garbler.*

GARCIO, Gartio. L. Lat. [Fr. *garcon*.] In old English law. A servant boy. *Fleta*, lib. 2, c. 20; c. 41, § 29.

GARD, Garde. L. Fr. In old English law. Ward; a ward of a city. *En le gard de Faringdon-extra*; in the ward of Faringdon-without. *Yearb.* P. 3 Hen. VI. 1. *Garde en Londres est come hundred en county*; a ward in London is the same as a hundred in a county. P. 7 Hen. VI. 42.

GARDE, Gard. L. Fr. [Lat. *custodia*.] Custody; care or keeping; ward. *Que est garde de prisons*; who has the keeping of prisons. *Stat. Westm.* 1, c. 15. *La garde de cors*; custody of the body. *Britt.* c. 11.

Ward, or wardship of a minor. *Britt.* c. 66.

A ward. *Id.* c. 21.

GARDEIN, Gardeyn. L. Fr. [from *garde* or *garder*, qq. v.] A guardian. *Britt.* c. 35, 81. *Litt.* sect. 48, 116. *Gardein* is used as an English word in Coke *Littleton*. Co. *Litt.* 38 b.

A keeper. *Britt.* cc. 1, 11.

A warden. *Artic. sup. Chart.* c. 20.

GARDEN. [L. Lat. *gardinum*.] A piece of ground (usually near a dwelling-house) appropriated to the cultivation of herbs or plants, fruits and flowers. Distinguished from a curtilage. See *Curtilage*. It has been held that trees in boxes in a garden will not pass by a grant of the garden. 6 *Mod.* 170. And see 1 *Chitt. Gen. Pr.* 177.

GARDER. L. Fr. To keep. *Sauvement gardes*; safely kept. *Britt.* c. 87.

GARDEROBA. L. Lat. In old English law. A wardrobe. *Fleta*, lib. 2, c. 6, § 1.

GARDEROBARIUS. L. Lat. In old

English law. Keeper of the wardrobe. An officer of the royal household. *Fleta*, lib. 2, c. 6, § 1. See *Id.* c. 5, § 1; c. 14, § 1.

GARDEYN. L. Fr. A guardian. *Britt.* c. 35. See *Gardein*.

A garden. *Britt.* c. 53.

GARDIAN, *Gardeyne*. Old forms of *Guardian*, (q. v.) *Cowell*.

GARDIANUS. L. Lat. [from Fr. *gardein*.] In old English law. A guardian, defender or protector. In feudal law, *gardio*. *Spelman*.

A warden. *Gardianus ecclesiæ*; a churchwarden. See *Defensor*. *Gardianus quinque portuum*; Warden of the Cinque Ports. *Spelman*.

GARDIEN. L. Fr. Warden. *Gardien de Flote*; Warden of the Fleet. *Yearb. M.* 7 Hen. VI. 9.

GARDINUM. L. Lat. In old English law. A garden. *Reg. Orig.* 1 b, 2. *Fleta*, lib. 4, c. 19, § 8.

GARENE. L. Fr. A warren; a privileged place for keeping animals. *Britt.* c. 19. *Bestes sauvages pris hors de place defendue et garene*; wild animals taken out of a place prohibited and protected. *Id.* c. 33.

GARIOFILLI. L. Lat. In old records. Cloves. *Cowell*. See *Garyophilli*.

GARNER, *Garnir*. L. Fr. To warn, or give notice; to summon; to give time for preparation. *Reasonablement garny*; reasonably warned. *Stat. Westm.* 1, c. 44. *De soy garnier de ses respons*; to prepare his answer. *Britt.* c. 121.

To furnish or provide; to clothe. See *Garnisher*, *Garnement*.

GARNEMENT. L. Fr. [from *garner*, q. v.] Furniture; clothing; a garment. *Obligacion doit estre vestue de v. maneres de garnementz*; obligation may be clothed in five kinds of garments. *Britt.* c. 28. *Id.* c. 39.

GARNISH. [L. Lat. *pensiuncula carceraria*.] In English law. Money paid by a prisoner on his entrance into gaol. Forbidden by statute 4 Geo. IV. c. 43, § 12, r. 23. *Wharton's Lex.* *Holthouse*.

To GARNISH. [L. Fr. *garnisher*.] To warn or give notice. *Cowell*.

GARNISHEE. [from L. Fr. *garnir*, to warn.] A person warned. A party in whose hands money or property is attached by the creditor of another, and who has had warning or garnishment not to pay or deliver it to the defendant. *Drake on At-*

tachment, § 451. A person indebted to a party sued, or having in his possession, belonging to the defendant, property, money, credits or effects. 24 *Mississippi R.* 638. 1 *Wisconsin R.* 447. See *Garnishment*, *Foreign Attachment*.

GARNISHER. L. Fr. To warn or summon. *Kelham*.

GARNISHMENT. [L. Fr. *garnissement*, *garnement*, from *garnir*, to warn or furnish.] In old English law. A warning; a furnishing. A warning given to one for his appearance, for the better furnishing the court and cause. *Cowell*. *Blount*.—A warning or summons to a party to appear and give the court instruction on any matter. *Crabb's Hist. Eng. Law*, 422.

* * In the old action of detinue of charters, the defendant might say that the charters were delivered to him by the plaintiff and another, upon certain conditions, and pray that the other might be warned to plead with the plaintiff whether the conditions were performed or not; the object of the warning or garnishment thus prayed for being, to furnish the court with all parties to the action, so that it might the more advantageously determine the cause. *Termes de la Ley*. *Cowell*. *Blount*. It was nearly allied to the proceedings in interpleader. 3 *Reeves' Hist.* 448. The definition of *Cowell*, above given, is intended to embrace both the significations of garnishment.

GARNISHMENT. In the process of attachment. A warning to a person in whose hands the effects of another are attached, not to pay the money or deliver the property of the defendant in his hands to him, but to appear and answer the plaintiff's suit. *Cowell*. *Blount*, voc. *Garnishee*. *Wharton's Lex.* *Drake on Attachment*, chap. 18.

GARNISTURA, *Garnestura*. L. Lat. [L. Fr. *garnesture*.] In old English law. A furnishing or providing; garniture; furniture; provision, ammunition and other implements of war. *Cowell*. *Blount*. *Matt. Paris*, A. D. 1250.

GARRANT, *Garrantie*. L. Fr. Warrant or authority. *Sans especial garrant*; without special warrant. *Stat. Westm.* 1, c. 24. *Éient leur garrantie*; shall have their warrant. *Artic. sup. Chart.* c. 2.

GARRANTER, *Garrantir*. L. Fr. To warrant. *Co. Litt.* 365 a. See *Garaunter*.

GARRANTIE, *Garranty*. L. Fr. Warranty. *Litt. sec.* 145, 697. *Stat. Glouc.* c. 12.

GARRANTOR. L. Fr. A warrantor, or person called upon to warrant. *Stat. Gloc. c. 12.*

GARREN. An old form of warren. *Free garren. T. Jon. 5.*

GARRENA, Garrenna. L. Lat. In old English law. A warren. *Cowell. Spelman. See Warren.*

GARRENE, Garren, Garreyn. L. Fr. A warren; a place for keeping and preserving animals. *Britt. c. 33, 42, 53. Barrington, Obs. Stat. 47, 48, note [d.] Kelham. See Garene.*

GARSUMME. In old English law. A fine or amercement. *Cowell.* Written also *Gressume* and *Grossome*, but properly *Gersuma*, (qq. v.) *Blount's Nomolox.* Advertisement.

GARTH. In English law. A yard; a little close or homestead in the north of England. *Cowell. Blount.*

A dam or wear in a river, for the catching of fish. *Id.*

GARYOPHILLI. L. Lat. In old records. Cloves. *Cowell, voc. Gariofilli.*

GARYTOUR. In old Scotch law. Warder. 1 *Pitc. Cr. Trials*, part 1, p. 8.

GASACHIO, Gasachius. L. Lat. [from Sax. *sac*, a cause.] In old European law. An adversary in a cause. *L. Salic. tit. 52, § 2. Spelman.*

GASINDUS, Gasindius. L. Lat. [from Fr. *case*, a house, and Sax. *hynde*, a servant.] In old European law. A house or domestic servant. *Marculf. lib. 2, form. 26. Spelman.*

A family or household, (*gasindium*.) *LL. Longob. lib. 2, tit. 14, l. 17. Spelman.*

GAST. L. Fr. Waste. *Britt. c. 51.*

GASTALDUS, Gastaldius, Gastaldio, Guastaldus. L. Lat. and Lomb. [from Sax. *gast*, a guest, and *haldian*, to keep or take care of.] In old European law. A steward, seneschal, bailiff or major-domo. *Spelman.* Applied also to higher officers, as the governor of a city or province. *Id. ibid.*

In the Books of Feuds, it seems to have the sense of warden or warder. *Feud. Lib. 1, tit. 2.*

GASTEL. L. Fr. Wastel; wastel bread; the finest sort of wheat bread. *Britt. c. 30. Kelham.*

GASTER. L. Fr. To waste. *Britt. c. 5. Gaster le boys*; to waste the woods. *Id. ibid.*

GASTINE. L. Fr. Waste or uncultivated ground. *Britt. c. 57.*

GATE. In English law. A right in

land for the use of cattle.* Literally, a going (of cattle over ground.) The term *beast-gate* (q. v.) is used in Suffolk, and *cattle-gate* (q. v.) in Yorkshire. It is a corporeal interest in land, distinguishable from the mere right of common of pasture. 1 *Chitt. Gen. Pr.* 182.

GAUDERE. Lat. To enjoy. *Nisi gaudeat lucidis intervallis*; unless he enjoys lucid intervals. *Bract. fol. 12. Nullo privilegio libero gaudebunt*; shall enjoy no free privilege. *Fleta, lib. 3, c. 16, § 3.*

GAUGEATOR. L. Lat. In old English law. A gauger or gager. *Cowell.*

GAUGETUM. L. Lat. In old English law. A gauge, or gauging. *De recto gaugeto Anglicano*; of the true English gauge. *Rot. Parl. 35 Edw. I. Blount.*

GAVEL. [from Sax. *gafol, gafel*, qq. v.] In English law. Custom, tribute; toll; yearly rent; payment or revenue; of which there were anciently several sorts; as *gavel-corn, gavel-malt, oat-gavel, gavel-fodder, &c. Termes de la Ley. Cowell. Co. Litt. 142 a.*

GAVELBRED. In English law. Rent reserved in bread, corn or provision; rent payable in kind. *Cowell.*

GAVELET, Gavelate. [L. Lat. *gaveletum, gavelectum, gavielletum*; from *gavel*, rent or custom, and the old word *let*, to cease or hinder.] In English law. A rent. *Co. Litt. 142 a.*

A process for the recovery of rent. *Hargrave's Note*, 231, lib. 2. A customary process, (called *consuetudo de gaveleto*), for the recovery of rent or service withheld by a tenant in gavelkind, whereby the lord might seize the land in the nature of a distress, to be returned to the tenant in case he paid the rent. *Termes de la Ley. Cowell.* It was a species of *cessavit*, originally peculiar to the tenure in gavelkind, and confined to Kent, but by the Statute of Gavelet, 10 Edw. II. was extended to the city of London. *Crabb's Hist. Eng. Law*, 203. See *Fleta*, lib. 2, c. 55, § 2.

GAVELET, Statute of. The statute of 10 Edw. II. by which the proceeding by gavelet, or a similar proceeding, was extended to the city of London, and the law on that subject otherwise modified. 2 *Reeves' Hist. Eng. Law*, 298. *Crabb's Hist.* 203. *Fleta*, lib. 2, c. 55, § 2.

GAVELGELD, Gavelgild. Sax. [from *gavel* or *gafel*, rent or income, and *geld*, payment; L. Lat. *gavelgilda*.] In old English law. That which yields a rent or

annual profit. *Si in gavelgilda, id est, in gablum reddente domo pugna fiat*; if the fight be in a gavelgild, that is, a house paying a rent. *LL. Inq.* c. 8. *Cowell. Spelman, voc. Gavelgilda. See Gafolgild.*

That which pays a tribute or toll; the tribute or toll itself. *3 Mon. Angl.* 155. *Cowell. Blount.*

GAVELHERTE, Gavelerth. Sax. In old English law. The duty or work of ploughing so much earth or ground, done by the customary tenant for his lord. *Cowell.* A rent or customary service, paid or performed by ploughing.*

GAVELING MEN. Tenants who paid a reserved rent, besides some customary duties to be done by them. *Cowell. See Gavelman.*

GAVELKIND, Gavelkynd, Gavelkende. A customary tenure in England, peculiar for the most part to the county of Kent, by which the land of the father is equally divided at his death among all his sons, or the land of the brother among all his brethren, if he have no issue of his own. *Kitch. fol.* 107. *Cowell. Blount.* 2 *Bl. Com.* 84. 1 *Steph. Com.* 53, 901. *Litt. sect.* 210, 265. The other distinguishing properties of this tenure are, that the tenant is of age sufficient to alien his estate by feoffment at the age of fifteen; and that the estate does not escheat in case of an attainder for felony. *Camd. Brit.* 229. *Bract. fol.* 276 b. *Flota, lib.* 6, c. 17, § 1. 2 *Bl. Com.* 84. 1 *Steph. Com.* 200. 1 *Crabb's Real Prop.* 596, § 753.

* * Gavelkind is supposed to have been a part of those ancient liberties which the Kentish men were allowed by the Conqueror to retain without change; and it is the opinion of Selden that, before the Norman Conquest, it was the general custom of the realm. *Seld. Analect.* l. 2. c. 7. *Spelman, in voc. Camd. Brit.* cited in *Cowell. T. Raym.* 76. It still prevails over almost the whole of the county of Kent, and, in a qualified manner, over copyhold lands in various parts of the kingdom. *Third Real Property Report*, p. 8. 1 *Steph. Com.* 200, note. 1 *Crabb's Real Prop.* 596—602. *See on Abstracts*, 25, 84, 85.

The etymology of the word itself has been variously given. *Spelman* derives it from the Sax. *gafel*, a tribute, or thing due or belonging, and *eyn*, kindred, or *kynd*, offspring; something due or belonging to all the children or kindred. *Mr. Hargrave* prefers the derivation from *gavel*, rent, and

kind; of such a kind as to yield rent. *Hargr. Co. Litt. Note* 224, lib. 2. *Mr. Crabb* adopts the latter, defining it, however, to mean a kind of service. *Crabb's Hist. Eng. Law*, 87. *Lambard*, on the other hand, considers it as composed of three Saxon words, *gif, eal, cyn*; given to all the kin; which *Spelman* adopts as the alternative of his own derivation.

GAVELMAN. In old English law. A tenant liable to the payment of gavel or tribute. *Somner on Gavelkind*, 23.

GAVELMED. In old English law. A duty, work or service of mowing grass, or cutting meadow land, required by a lord from his customary tenant. *Consuetudo falcandi quæ vocatur gavelmed.* *Somner, Gavelk. Appendix. Cowell.*

GAVELREP, Gavelryp. In old English law. Bed-reap or bid-reap; the duty of reaping at the bid or command of the lord. *Somner, Gavelk.* 19, 21. *Cowell.*

GAVELSESTER. [*L. Lat. sextarius vectigalis.*] In old English law. A certain measure of rent-ale. *Cowell.* That is, a rent, tribute or gavel, payable in a certain measure, (a sextary or sexter) of ale.* Otherwise called *Tolcoaster.*

GAVELWERK. In old English law. A rent or tribute paid in work, either by the person of the tenant, called *manu-opera*, or by his carts or carriages, called *carr-opera.* *Blount.*

GAYLE. *L. Fr. Gaol. Yearb. Ad-*ditions, T. 2 *Edw.* III. 15.

GAYNAGE. *L. Fr.* Plough tackle, or implements of husbandry; wainage. *Kelham.*

GAYNE. *L. Fr. Gain. Britt.* c. 30.

GAYNER. *L. Fr.* To till or cultivate. *Si tu gaynes ma terre sans mon congé*; if you till my land without my leave. *Britt.* c. 54.

To gain. *Pur gayner ac per perdre*; to gain nor to lose. *Id.* c. 122.

GAYNERIE. *L. Fr.* Acquisition. *Britt.* c. 53.

GE, Gie, Gi. *L. Fr. I. Kelham.* Corrupt forms of *Jeo.*

GEBOCIAN. Sax. [from *boc*, a writing.] To convey by writing. 1 *Reeves' Hist. Eng. Law*, 10. See *Boc, Boeland, Landboe.*

GEBURSCIP. Sax. [*L. Lat. geburscipa.*] In Saxon law. Neighborhood or adjoining district. *Nominentur ei sex homines de eadem geburscipa in quæ illi residents est*; there shall be named to him six men of the same *geburscip* in which

he is a resident. *LL. Edw. Conf. c. 1. Cowell.*

GEBURUS. *L. Lat.* [*Sax. gebure.*] In old English law. A country neighbor; an inhabitant of the same *geburscip*, or village. *Cowell.*

GEIGNEUR. *L. Fr.* [from *gainer*, to plow.] In Norman law. A husbandman or cultivator of the soil. *Grand Custum. c. 32.*

GELD. *Gild.* *Sax.* [from *geldan*, *gyl-dan*, to pay; *L. Lat. geldum, geldus, geltum, gilda*; *Græco-barb. γάρον.*] In Saxon and old English law. A payment, (*solutio, redditus*;) tax or tribute, (*tributum*;) a sum of money exacted of a subject, (*exactio, pecunia*;) *Vicinos terra, suos exercitiis frequentissimis, et geldis continuis vexabat*; he harassed his neighbors with war, and his own subjects with frequent military expeditions, and continual exactions. *Henr. Huntington, Hist. lib. 7, de Will. Rufo, A. D. 1100. Spelman.* There were various kinds of geld, as *Danegeld, wodegeld, senegeld, horngeld, fotgeld, pengeld*, &c. (qq. v.) In *Domesday geldum*, or *geltum*, is generally used for *Danegeld*, which was a tribute regularly imposed upon every town in the time of the Saxons. *Spelman.*

A mulct or fine; a satisfaction or compensation for a crime, (*compensatio delicti*;) the price or value of a thing; (*pretium rei*.) *Spelman.* *Wergild*, the value or price of a man slain; *orfild*, the value of a beast slain; *angild*, the single value; *twigild*, double the value; *trigild*, triple, &c. *Id.* See *Gild, Wergild, Orfgild, Angild, Twigild, Trigild, Octogild, Novigild.*

GELDABILIS. *L. Lat.* In old English law. Taxable; geldable. *Mem. in Scacc. M. 10 Edw. I.*

GELDABLE. *L. Fr.* Liable to pay geld; liable to be taxed. *Kelham.* See *Gildable.* *Croft est en geldable. M. 7 Edw. III. 37.*

GELDUM, Geltum, Geldus. *L. Lat.* In old English law. Geld, or gild. *Spelman.* See *Geld.*

GELINA. *L. Lat.* In old records. A bundle or sheaf of grain. *Spelman.*

GELINE. *L. Fr.* [from *Lat. gallina*.] A hen; a fowl. *Yearb. M. 11 Hen. VI. 4.*

GEMMA. *Lat.* In the civil law. A gem; a precious stone. Gems were distinguished by their transparency; such as emeralds, chrysolites, amethysts. *Dig. 34. 2. 19. 17.*

GEMOT, Gemote, or Mote. *Sax.* [from *gemellan*, to meet or assemble; *L. Lat. gemotum*.] In Saxon law. A public meeting or assembly, (*conventus publicus*;) a court, or judicial tribunal, (*mallum, placitum, forum juridicum*.) *Spelman, voc. Gemotum.* Used in various combinations, as *wittenagemot*, a meeting of the wise men; *folcagemot, or folcmote*, a meeting of the people; *sciregemot*, a meeting of the shire, a county meeting, or court; *hundredgemot*, a meeting of the hundred, or hundred court; *wardagemot*, a ward meeting; *haligemot*, an ecclesiastical meeting or court; *halmot*, a hall meeting, or court, a court baron; *swainagemot*, a forest court. See these words. *Ge*, in this word, is merely a particle, frequently prefixed to Saxon nouns and verba. *Spelman, ub. sup.* See *Mote.*

GEMOTUM. *L. Lat.* [*Sax. gemote, mote*.] In Saxon law. A public meeting, or court. *Si quis gemotum, id est placitum, supersedeat ter, &c.*; if any one shall absent himself from court three times, &c. *LL. Athelstan, c. 20. Omnis homo pacem habeat cundo ad gemotum, et rediens de gemoto, nisi probatus sur fuerit*; every man shall have peace, (that is, privilege from arrest,) while going to court, and returning from court, unless he is proved to be a thief. *LL. Edw. Conf. c. 35. Spelman.*

GEN. An abbreviation of *generosus*, (q. v.) 1 *Instr. Cler. 10.*

GEN'AL. A contraction of *generalis*, (q. v.) 1 *Instr. Cler. 10.*

GENEATH. *Sax.* In Saxon law. A villein, or agricultural tenant, (*villanus, villicus*;) a hind or farmer, (*firmarius, rusticus*.) *LL. Inoc, c. 19. Spelman.*

GENER. *Lat.* In the civil law. A son-in-law; a daughter's husband, (*filius viri*.) *Dig. 38. 10. 4. 6.* And see *Id. 50. 16. 136.*

GENERAL. That which comprehends all, the whole; as distinguished from *special*, which signifies something designed for a particular purpose. These terms, applied to jurisdiction, indicate the difference between a legal authority extending to the whole of a particular subject, and one limited to a part; and, when applied to the terms of court, the occasion upon which these powers can be respectively exercised. *Gardiner, J. 1 Comstock's R. 332.*

GENERAL (or PUBLIC) ACT. An act of the legislature which regards the whole community; a universal rule; of

which the courts of law are bound to take notice judicially and *ex officio*. 1 *Bl. Com.* 85, 86.

GENERAL AGENT. A person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. *Story on Agency*, § 17.

In another sense, a person who has a general authority in regard to a particular object or thing. *Id.* § 18.

GENERAL AVERAGE. In commercial law. A contribution made by the proprietors in general of a ship or cargo, towards the loss sustained by any individual of their number, whose property has been voluntarily sacrificed for the common safety; as where in a storm, jettison is made of any goods, or sails or masts are cut away *levandæ navis causâ*, (to lighten the vessel.) 2 *Steph. Com.* 179. See *Average*. To constitute a case for general average, these things must concur: 1. An imminent common peril; 2. A voluntary jettison to avoid this peril; and 3. The success of the attempt. See the opinion of Grier, J. 10 *Howard's R.* 303. See, also, the opinion of Lowrie, J. 25 *Penn. St. R.* 372.

GENERAL CHARACTER. See *Character*.

GENERAL DAMAGES. In pleading and practice. Such damages as necessarily result from the injury complained of, and which may be shown under the *ad damnum*, or general allegation of damages at the end of the declaration. 2 *Greenleaf on Ev.* § 254.

GENERAL DEMURRER. In pleading. A demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to, where the objection is to matter of substance. *Steph. Plead.* 140—142. 1 *Chitt. Pl.* 663. See *Demurrer*.

GENERAL ISSUE. In pleading. A short general plea, in actions at law, denying the allegations contained in the plaintiff's declaration, in summary terms, and concluding with a tender of issue.* *Steph. Pl.* 155. 3 *Steph. Com.* 576. 1 *Chitt. Pl.* 472. It is called the *general issue*, according to Mr. Stephen, because the issue that it tenders, involving the whole declaration, or the principal part of it, is of a more *general* and comprehensive kind than that usually tendered by a common traverse. *Steph. Pl. ub. sup.* See *Issue, Traverse*.

GENERAL LAND OFFICE. A department of the government of the United States, under the supervision of an officer called the commissioner of the general land office, having charge of the surveying and sale of the public lands of the United States, and the issuing of patents for all grants of land under the authority of the government. See *Act of Congress*, July 4, 1836, sess. 1, ch. 352. And see Acts of April 25, 1812, and March 24, 1824.

GENERAL LEGACY. A pecuniary legacy, payable out of the general assets of a testator. 2 *Bl. Com.* 512. *Ward on Legacies*, 1, 16.

GENERAL LIEN. The right which the bailee of a chattel has to retain possession of it from the owner, until payment be made not only for the particular article, or some labor, service or expense performed, incurred or laid out upon or in relation to it, but of any balance that may be due on general account in the same line of business.* 2 *Steph. Com.* 132. See *Lien*.

GENERAL OCCUPANT. At common law, where a man was tenant *pur auter vie*, or had an estate granted to himself only, (without mentioning his heirs,) for the life of another man, and died without alienation during the life of *cestuy que vie*, or him by whose life it was holden, he that could first enter on the land might lawfully retain the possession, so long as *cestuy que vie* lived, by right of occupancy, and was hence termed a *general* or *common occupant*. 2 *Bl. Com.* 258. 1 *Steph. Com.* 415. 2 *Crabb's Real Prop.* 70, § 1049. But this right of general occupancy was taken away by the statutes 29 Car. II. c. 3, and 14 Geo. II. c. 20. *Id. ibid.*

GENERAL PARTNERSHIP. A partnership in which the parties carry on all their trade and business, whatever it may be, for the joint benefit and profit of all the parties concerned, whether the capital stock be limited or not, or the contributions thereto be equal or unequal. *Story on Partn.* § 74.

GENERAL SHIP. In maritime law. A ship employed as a general carrier. *McCulloch's Dict.*—A ship open to all merchants; as distinguished from a *chartered ship*, which is contracted for by one or more exclusively. When the goods of several merchants, unconnected with each other, are laden on board without any particular contract of affreightment with any

individual for the entire ship, the vessel is called a general ship. 3 *Kent's Com.* 202. 2 *Steph. Com.* 184. *Smith's Merc. Law*, 175.

GENERAL (or PUBLIC) STATUTE.

A statute relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute. 4 *Co.* 75 a, *Holland's case*. 1 *Bl. Com.* 85, 86. *Dwarris on Statutes*, 829.

GENERAL VERDICT.

In practice. The ordinary verdict delivered orally by a jury in civil actions, in which they find generally "for the plaintiff," or "for the defendant," and which is entered on record in the terms of the issue or issues referred to them. 2 *Tidd's Pr.* 869. 1 *Arch. Pr.* 213.

GENERAL WARRANT. A process which formerly issued from the state secretary's office in England, to take up, (without naming any persons in particular,) the author, printer and publisher of certain libels specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons. *Com. Journ.* 22, April, 1766.

GENERALE. L. Fr. General. *Generale rule de ley est que, &c.* *Britt.* c. 121. *Generalement*; generally. *Id.* fol. 3.

GENERALE. Lat. General; a general thing.

Generale nihil certum [certi] implicat. A general expression implies nothing certain. 2 *Co.* 34 b, *Doddington's case*. A general recital in a deed has not the effect of an estoppel. *Best on Evid.* 408, § 370.

Generale tantum valet in generalibus, quantum singulare in singulis. What is general is of as much force among general things, as what is particular is among things particular. 11 *Co.* 59 b, *Foster's case*.

Generale dictum generaliter est interpretandum. A general expression is to be interpreted generally. 8 *Co.* 116 a, *Bonham's case*.

GENERALIA. Lat. (pl. of *generale*.) General things.

Generalia sunt præponenda singularibus. General things are to be put before particular things. *Branch. Princ.* **Generalia præcedunt, specialia sequuntur.** General things precede, special things follow. *Id.*

Generalia specialibus non derogant. General things do not derogate from, or affect things special. *Jenk. Cent.* 120,

case 41. Applied to a general statute passed after a special one. *Id. ibid.* See *Genus*.

Generalia verba sunt generaliter intelligenda. General words are to be understood generally, or in a general sense. 3 *Inst.* 76. *Broom's Max.* [502.]

Generalibus specialia derogant. Special things take from generals. *Halkerst. Max.* 51.

GENERALIS. Lat. General. *Generalissimum*; most general. 2 *Bl. Com.* 19.

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa. A general clause does not extend to those things which are previously provided for specially. 8 *Co.* 154 b, *Altham's case*. Therefore, where a deed at the first contains special words, and afterwards concludes in general words, both words, as well general as special, shall stand. *Id. ibid.*

Generalis regula generaliter est intelligenda. A general rule is to be understood generally. 6 *Co.* 65.

GENERALITER. Lat. [from *generalis*, q. v.] Generally. *Dig.* 50. 17. 78.

Generaliter dicta generaliter sunt interpretanda. Things expressed in general terms, are to be interpreted generally. *Shep. Touch.* 88. Another form of this maxim is, **Generaliter dictum generaliter interpretandum.** 1 *Eden*, 96.

GENEROSUS. L. Lat. Gentleman; a gentleman. *Spelman.* 7 *East*, 389, arg.

GENEROsa. L. Lat. Gentlewoman. *Cowell.* 2 *Inst.* 688.

GENICULUM. L. Lat. In old feudal law. A generation; a degree of consanguinity. *Feud. Lib.* 1, tit. 1, § 5. *L. Longob.* lib. 2, tit. 14, l. 1. *Spelman.*

GENS. Lat. In Roman law. A class or clan; a subdivision of the Roman people next in order to the *curia*, (q. v.) and which was again subdivided into *familia*. *Adam's Rom. Ant.* 34. *Calv. Lex. Brande.* See *Familia*.

A people or nation. See *Gentes*.

GENTES, (pl. of *gens*.) L. Lat. People. *Contra omnes gentes*; against all people. *Bract.* fol. 37 b. Words used in the clause of warranty in old deeds.

GENTLEMAN. [L. Fr. *gentil-homme*; L. Lat. *generosus*.] A title in England, ranking next below esquire. 1 *Bl. Com.* 405, 406. *Spelman*, voc. *Generosus*. Mr. Barrington conjectures that the term *gentleman* properly signifies he who has a sur-

name, or family name, [from *gens*, a family,] or distinguished from the *simple-homme*, who had no surname. *Obs. Stat.* 288.

GENTLEWOMAN. A title given to women in England, corresponding with gentleman. See *Generosa*.

GENTS, Gentes, Gentz, Gentem, Gents, Gienz. L. Fr. [L. Lat. *gentes*, q. v.] In old English law. People; persons; folk. *Des gentz de la ville*; the people of the town. *Stat. Westm.* 1, c. 7. *Les lays gentz que ne sont apprises en la ley*; the common people who are not learned in the law. *Litt. sect.* 331. *Artic. sup. Chart.* c. 2. *Touts autres gentes de mound*; all other people of the world. *Stat. Mod. Lev. Fines.* *Gentz malades*; sick people. *Britt.* c. 21. *Gentz arrages*; insane persons. *Id.* c. 34. *Gentz nient demorauntz en pays*; persons not residing in the country or neighborhood. *Id.* c. 21. Used by Britton in the same sentence with *people*. *Id. ib.* fol. 36.

The singular *gent* also sometimes occurs in the books. *Ceux que endorment la gent*; those who charm the people. *Britt.* c. 15. *Desgarny de forte gent*; unprovided with brave people. *Id.* c. 123.

GENUS. Lat. In the civil law. A general class or division, comprising several species. *In toto jure generi per speciem derogatur, et illud potissimum habetur quod ad speciem directum est*; throughout the law, the species takes from the genus, and that is most particularly regarded which refers to the species. *Dig.* 50. 17. 80.

A man's lineage, or direct descendants. *Blackst. Law Tr.* 4. See *Calv. Lex.*

GENUS. Lat. A general word. 4 Co. 76 a.

GEOLE. L. Fr. A prison. *Kelham.*

GEREFA, Grefa, Refa. Sax. [from *gerefen* or *reafen*, to exact or take away.] In Saxon law. Greve, reeve or reeve; a ministerial officer of high antiquity in England; answering to the *grave* or *graf* (*græfo*) of the early continental nations. The term was applied to various grades of officers, from the *scyro-grefa*, *shire-græfe* or *shire-reeve*, who had charge of the county, (and whose title and office have been perpetuated in the modern *sheriff*;) down to the *ten-grefa*, or town-reeve, and lower. *Spelman* (voc. *Græfo*), supposes it to have properly denoted an officer employed to collect taxes, or public dues, (*ad jura fe-*

calia exigenda.) 1 *Spence's Chancery*, 80. See *Grafia*, *Greve*, *Reeve*.

A steward or superintendent. *Sax. Evang. Matt.* xx. 8.

GERECHTSBODE. Belg. In old New-York law. A court messenger or constable. O'Callaghan's *New-Netherlands*, i. 322.

GERENS. Lat. [from *gerere*, to bear.] Bearing. *Gerens datum*; bearing date. 1 *Ld. Raym.* 336. *Hob.* 19.

GERERE. Lat. To bear or carry; to behave or conduct; to act, strictly, without words. See *Dig.* 50. 16. 19. *Pro hærede gerere*; to act as heir. *Fnst.* 2. 10. 6. *Pro hærede gerere est pro domino gerere*; to act as heir is to act as owner. *Id. ibid.* *Calv. Lex.* *Gerit pro hærede*. *Bract.* fol. 70 b.

To manage, or administer. *Calv. Lex.* **GERMAN.** [Lat. *germanus*, q. v.] Of the whole blood; of the nearest degree.

GERMANUS. Lat. Descended of the same stock, or from the same couple of ancestors; of the whole or full blood. 1 *Mackeld. Civ. Law*, 140, § 192.

GERMEN TERRÆ. Lat. A sprout of the earth. A young tree, so called. *Bacon's Works*, iv. 218.

GERMINS. Young trees. *Ambi.* 132.

GERONTOCOMIUM. Græco-Lat. [from Gr. *gerontokomion*, 'from *geron*', old, and *komion*, to nurse or take care of.] In the civil law. An institution or hospital for taking care of the old. *Cod.* 1.3. 46. 1. *Calv. Lex.*

GERSUMA. Sax. and L. Lat. In old English law. A price, reward or sum of money; (*sumptus, premium*;) the greater and better part of goods. *Spelman. Chron.* *Sax. A. D.* 1035, 1065, cited *ibid.*

A fine or consideration paid for a thing. The word is used very frequently in this sense in old charters. *Sciat is me pro tot libris quas N. mihi dedit in gersumam, dedisse, concessisse, &c.*; Know ye that I, for so many pounds which N. has given me for a *gersume*, have given, granted, &c. *Spelman.*

A fine, amercement or compensation for an offence. *Spelman.*

This word is written by Matthew Paris *gersoma*. *Gressuma*, *grossome* and *garsume* are other forms of it; but these are pronounced by Mr. Blount to be corruptions. *Blount's Nomelæx.* (ed. 1691.) Advertisement.

GERSUMARIUS. L. Lat. [from *ger-*

suma, q. v.] In old English law. Fina-
ble, or liable to be mulcted, fined or
amerced at the discretion of the lord.
Cowell.

GESKERECH. L. Fr. The month of
August. *Kelham.*

GEST. Sax. In Saxon law. A guest.
A name given to a stranger on the *second*
night of his entertainment in another's
house. *Two night gest.* *LL. Edw. Conf.*
c. 17, *apud Spelman*, voc. *Homehyme*.
Bracton writes the word *gust*. *Bract.* fol.
124 b. *Geste* is the form in Britton.
Britt. c. 12.

GESTIO. L. Lat. [from *gerere*, to be-
have, act or do.] In the civil law. Beha-
viour, or conduct. See *Gestio pro hærede*.

Management or transaction. *Negotio-
rum gestio*; the doing of another's business;
an interference in the affairs of another
in his absence, from benevolence or friend-
ship, and without authority. *Dig.* 3. 5. 45.
2 *Ken's Com.* 616, note.

GESTIO PRO HÆREDE. L. Lat.
In the civil law. Behaviour as heir; that
conduct by which an heir renders himself
liable for his ancestor's debts; as by taking
possession of title deeds, receiving rents,
cultivating land, &c. *Bell's Dict.* 1 *Forbes'*
Inst. part. 3, b. 2, p. 100. See *Gerere*.

GESTOR. Lat. [from *gerere*, to act.]
In the civil law. One who acts for another,
or transacts another's business. *Calv. Lex.*
See *Negotiorum gestor*.

GESTUM. Lat. [from *gerere*, to do.]
Done; a thing done; a transaction. *Cod.*
7. 52. 6. Strictly, a thing done without
words, and so distinguished from *actum*,
(q. v.) A distinction was sometimes made
in the civil law, between this word and
factum. Gaius, however, in the Digests,
pronounces this to be subtle, (*subtilis*) and
holds that practically there was no dif-
ference between them. *Dig.* 50. 16. 58.

GESTUM, Gesta. L. Lat. In old Eng-
lish law. Yeast; barm; the flower or
froth of ale or beer. *Stat. Assis. Pan. et*
Cervis. 51 Hen. III. *Spelman.* *Fleta*,
lib. 2, c. 10. Otherwise called *levanum*,
leaven. *Id.*

GESTUS. Lat. [from *gerere*, to con-
duct; L. Fr. *gest*, *gette*.] In old English
law. Behaviour; conduct. See *De gestu*
et fama.

GETTER. L. Fr. To throw or cast.
Gette; cast, (as an essoin.) *Britt.* c. 74. 123.
To bring. *Et getta les faits en court.*
Yearb. M. 19 Hen. VI. 6.

GEVILLOURIS. Sc. In old Scotch
law. Gaolers. 1 *Pitt. Crim. Trials*, part
2, p. 234.

GEWITNESSA. Sax. In Saxon law.
The giving of evidence. *LL. Ethelred.* c.
2, *apud Brompton*.

GEWRITE. Sax. Writings. Deeds or
charters were so called among the Saxons.
1 *Reeves' Hist. Eng. Law*, 10. *Crabb's*
Hist. 14. See *Landbec*.

GIEU, Geu. L. Fr. A Jew. *Kelham.*

GIFT. [L. Lat. *donatio*; L. Fr. *don*,
done.] A voluntary and gratuitous con-
veyance, or transfer of lands or goods from
one to another, not founded on the con-
sideration of money or blood.* 2 *Bl. Com.*
440. 2 *Steph. Com.* 102. 2 *Ken's Com.*
437.

In English law. A conveyance of lands
in tail; a conveyance of an estate tail, in
which the operative words are "I give,"
(*do*), or "I have given," (*dedi*). 2 *Bl. Com.*
316. 1 *Steph. Com.* 478. See *Donatio*,
Done.

* * In a general sense, a gift is the most
comprehensive kind of transfer in law. The
ancient conveyances of land in England
were nearly all gifts. Bracton calls *donatio*
(*gift*) the most important and distin-
guished, as well as the most ordinary
method by which property could be ac-
quired. *Inter alias causas acquisitionis*
magna, celebris et famosa est causa donatio-
nis, &c. Quia per eam magis acquiritur et
sapius quam per aliam, &c. *Bract.* fol.
11. *I give*, (*do*), is the term constantly
employed by the same writer in his exam-
ples of the most free, large and absolute
kind of conveyance. *Id.* fol. 17. Gifts
indeed, at this time, expressly included
conveyances in fee simple, as well as fee
tail. *Donationum, quedam absoluta et*
larga, et quedam stricta et coarctata, sicut
certis hæredibus. *Id.* fol. 11 b. Afterwards,
the term gift came to acquire the peculiar
and technical meaning now appropriated
to it in the English law of real estate, being
restricted in its application to estates tail;
the distinction being made between a gift
in tail and a feoffment in fee. The latter
conveyance, however, continued to be called
a gift (*donatio feudi*), and its aptest word
was *do*, (I give), or *dedi*, (I have given.)
2 *Bl. Com.* 316, 310. See *Gratuitous*.

GIFT OF PERSONAL PROPERTY.
A voluntary and gratuitous transfer of a
chattel or chose in action; which, to be
valid and binding, must either be accompa-

nied by the solemnity of a deed, or by that of actual delivery of possession. 2 *Steph. Com.* 109. 2 *Bl. Com.* 440, 441. 2 *Kent's Com.* 437—443. *United States Digest*, Gift. See *Donatio*.

GIFTA AQUÆ. L. Lat. In old records. A stream of water. *Blount. 8 Mon. Angl.* cited *ibid.*

GILD, Guild, Geld. Sax. [from *geldan*, or *gyldan*, to pay; L. Lat. *gilda, gildum*.] In Saxon law. A tax or tribute. *Spelman, voc. Geldum. Camd. Brit.* 135, 139, 159, &c. See *Geld*. Hence *gildable*, taxable.

A fine, mulct, or amerciamment; a satisfaction or compensation for an injury. *Crompton, Jurisd.* 191. *Spelman, voc. Geldum*. See *Wergild, Orfgild, Angild*, &c.

A fraternity, society, or company of persons combined together, under certain regulations, and with the king's license, and so called because its expenses were defrayed by the contributions, (*geld, gild*, Sax. a payment,) of its members, (*quod ex connectis pecuniis sodalitiis impendio subministratur*.) *Spelman, ub. sup. Termes de la Ley*. In other words, a corporation; called in Latin *societas, collegium, fratria, fraternitas, sodalitium, adunatio*; and in foreign law, *gildonia*. *Spelman, ub. sup.* There were various kinds of these *gilds*, as merchant, or commercial *gilds*, religious *gilds*, and others. 3 *Turner's Hist. Anglo-Sax.* 98. 3 *Steph. Com.* 173, note (u). See *Gilda Mercatoria*.

A friborg, or decennary; called by the Saxons *gyldscipes*, and its members *gildones*, and *congildones*. *Spelman, ub. sup.*

GILDA, Guilda. L. Lat. In old English law. A gild or guild; a company or corporation. *Spelman, voc. Geldum. Brownl. part 2*, 286.

GILDA MERCATORIA. L. Lat. A gild merchant, or merchant gild; a gild, corporation, or company of merchants. *Reg. Orig.* 219 b. 2 *Ld. Raym.* 1134. 1 *Spence's Chancery*, 55. 8 *Co.* 125 a. If the king grants to a set of men to have *gildam mercatoriam*, this alone is sufficient to incorporate and establish them forever. 10 *Co.* 30. 1 *Roll. Abr.* 513. 1 *Bl. Com.* 473, 474.

GILDABLE, Guildable, Geldable. [from Sax. *gild*, or *geld*, qq. v.] In old English law. Taxable, tributary or contributory; liable to pay tax or tribute. *Cowell. Blount. Stat. 27 Hen. VIII.* c. 26. 8 *Co.* 125 a.

GILDALE. [from Sax. *geld*, a payment.] In old English law. A computation, where every one paid his share. *Cowell. Blount.*

GILD-HALL. See *Guild-hall*.

GILDHALLA, Guildhalla. L. Lat. [*gilda aula* or *halla*.] In old English law. The hall or place of meeting of a gild; a guild-hall. *Spelman, voc. Geldum. Gildhalla Teutonicorum*; the hall or place of meeting of the fraternity of Easterling merchants, (or merchants of the Hanse-towns,) in London; called the Stilyard. *Spelman, ub. sup. Cowell, voc. Gild. Stat. 22 Hen. VIII.* c. 8.

GILD MERCHANT. A company of merchants. See *Gilda mercatoria*.

GILDO. L. Lat. In Saxon law. A member of a gild or friborg. *Spelman, voc. Geldum*.

GILDRENT. A rent payable by any gild or fraternity. *Blount.*

GILDONIA. L. Lat. In old European law. A gild or company. *Spelman, voc. Geldum*. This word is of frequent occurrence in the laws of the Franks, Lombards, and other early nations of Europe. *Id. ibid.*

GILOUR. L. Fr. A cheat or deceiver. Applied in Britton, to those who sold false or spurious things for good, as pewter for silver or latten for gold. *Britt. c.* 15.

GIPPEWICUS, Gipwicus, Gippus. L. Lat. Ipswich, in England. 2 *Ld. Raym.* 1239. 2 *Salk.* 434.

GIRTH AND SANCTUARY. In old Scotch law. An asylum given to murderers, where the murder was committed without any previous design, and in *chaude mella*, or heat of passion. *Bell's Dict.*

GISARMES, Guisarmes. L. Fr. [L. Lat. *gisarma*.] In old English statutes. A kind of axe or halbert; a bill. *Stat. Winton.* 13 *Edw. I. Spelman. See Fleta*, lib. 1, c. 24, § 12. Kelham describes it as "a military weapon like a lance or long bayonet."

GISER, Gysar. L. Fr. [from Lat. *jacere*.] In old English law. To lie. *Giser à meason*; to lie or lodge at a house. *Stat. Westm.* 1, c. 1. *Giser en langour*; to lie sick. *Britt. c.* 115. *Gisaunte au founs*; lying at the bottom. *Id. c. 1. Ne gist en le bouche*; it does not lie in the mouth. *Litt. sect.* 58, 149. Literally rendered in the Latin of the statute of Westminster 2, (c. 9,) *non jacet in ora*. The English of this phrase is still used. *Gisont*; (they) lie. *Litt. sect.* 10.

To lie, as an action; to be competent. *Ou assise ne gist point*; when an assise does not lie. *Britt. c. 43. Ou gist atteynte. Id. c. 98. Le action bien gist*; the action well lies. *Freem. 1.*

GISSANE. Sc. In old Scotch law. Child-bed. Usually written *gizzene*, or *jizzen*, from O. Fr. *gisante*, a woman lying in the straw. 1 *Pitt. Cr. Trials*, part 1, p. 51, note.

GIST (or GIT) OF AN ACTION. The material point on which the action lies. 5 *Mod. 305. 1 Stra. 574.* "The escape, is the gist of the action." *Holt, C. J. 5 Mod. 9.*

GISIL, *Gisilis*. L. Lat. and Lomb. In old European law. A witness; a pledge or hostage. *LL. Longob. lib. 2, tit. 15, l. 1. Spelman.*

GIT. See *Gist*. "The *per quod* makes the *git* of the action." *Holt, C. J. 12 Mod. 266.*

To GIVE. [Lat. *dare*.] I give, (*do*;) I have given, (*dedi*.) The emphatic and apt words of ancient deeds of gift. See *Gift, Do, Dare, Dedi*. The word *give*, in a conveyance, no longer implies or imports in England a covenant in law, as it formerly did. *Stat. 8 & 9 Vict. c. 10, § 6. Archbold's Land. & Ten. 67, 68.* The old English rule is still followed in some of the United States. See 2 *Hilliard's Real Prop. 365, 366.*

The word *give*, in a contract, does not import a mere gratuity. "To give flour for wheat," is to give it in consideration and as an equivalent. See 2 *Comstock's R. 156.*

GIVEN. [Lat. *datum*, Fr. *done*, qq. v.] Anciently written *yeoven*, and *yeuen*, (qq. v.)

GLADIUS. Lat. A sword. An ancient emblem of defence. *Gladius significat defensionem regni et patriæ. Bract. fol. 5 b.* Hence the ancient earls or *comites*, (the king's attendants, advisers, and associates in his government,) were made by being girt with swords. *Id. ibid.*

The emblem of the executory power of the law in punishing crimes. 4 *Bl. Com. 177.* See *Jus gladii*.

GLANS. Lat. In the civil law. Acorns or nuts of the oak or other trees. *Brissotius.*

In a larger sense, all fruits of trees. *Glandis nomine omnes fructus continentur. Dig. 43. 28. Id. 50. 16. 236. 1. Glans caduca*; fruit which falls from the tree. *Dig. 50. 16. 30. 4.*

GLANS. Lat. In old English law. Acorns, nuts or mast of the oak and other

trees, as the chestnut and beech. It seems to have included any produce of trees that might be fed upon by animals, as distinguished from herbage. *Glandis nomine continetur glans castanea, fagina, ficus et nuces, et alia quæque quæ edî vel pasci poterunt præter herbam. Bract. fol. 226 b. 2 Inst. 411.*

GLANVILLE. The author of the most ancient treatise on English law, written in Latin, about A. D. 1181, under the title of *Tractatus de Legibus et Consuetudinibus Angliæ*; (A Treatise of the Laws and Customs of England.) The older writers are generally agreed that this was *Ranulphus de Glanvilla*, chief justiciary of England, to Henry II. who was equally eminent as a soldier and a judge, and died at the siege of Acre, in 1190. *Hoveden in Hen. II. Staunf. Præf. c. 1, fol. 5. Catlin, C. J. Plowden, 368 a. Cowell. 8 Co. pref. Crabb's Hist. Eng. Law, 70.* The same opinion is adopted by *Spelman* and *Sir Matthew Hale. Hist. Com. Law, c. 7.* Lord Coke gives the arms and genealogy of Glanville, and speaks with the greatest confidence on the subject. 8 *Co. ub. sup.* Mr. Reeves, however, doubts the identity of these individuals, and thinks that the Glanville who wrote the treatise might have been a person of that name who was a justice itinerant. 1 *Reeves' Hist. Eng. Law, 223.*

As to the work itself, there is little doubt of its being the most ancient treatise on English law. *Spelman* remarks that Glanville was the first who attempted to make that law a *lex scripta*, or written law. *Hic cum ad suam usque ætatem, ὑπαρῶς, id est, non scripta, mansisset maxima pars juris nostri, omnium primus ὑπαρῶς reddere aggressus est. Spelman, vocc. Justitio, Justitiarius.* But it possesses a higher interest even than this, from the fact of its being the oldest work of the kind in Europe. Dr. Robertson observes that it was the first undertaking in any country in Europe, to collect into one body the customs which then regulated the administration of justice, and thus to render the law fixed. 1 *Robertson's Charles V. Appendix, Note xxv.* Defontaine, the oldest law writer in France, composed his *Conseil* about half a century afterwards. See *Defontaine*.

GLEANNING. The gathering of grain after reapers, or of grain left ungathered by reapers. Held not to be a right at common law. 1 *H. Bl. 51.*

GLEBA. Lat. In the civil law. A turf, sod or clod of earth.

The soil or ground; cultivated land in general. *Cod. Theodos.* See *Adscriptitius*.

In old English law. Church land; (*solum et dos ecclesie*.) *Spelman.* See *Glebe*. Land to which the advowson of a church is annexed. *Fleta*, lib. 3, c. 2, § 18.

GLEBARIÆ. L. Lat. [from *gleba*, q. v.] In old records. Turfs or peat; peat lands. 1 *Mon. Angl.* 920. *Cowell.*

GLEBE. *Glebeland.* [L. Fr. *glebe*; L. Lat. *gleba*.] In ecclesiastical law. Church land; land belonging to a parish church. *Cowell.* *Blount.* A portion of land attached to the benefice of a rector or vicar, in addition to the parsonage or vicarage house, as part of its endowment. 3 *Steph. Com.* 113. Anciently called *dos ecclesie*. *Lyndesode*, *Prov.* lib. 3, tit. *de eccles. edific.* § 1. *Spelman.* *Com. Dig.* Dismes, B. 2. "The four aickers of land, quhilk is graunted to the ministers of the evangell within this land, is called *ane glebe*." *Skene de Verb. Signif.* voc. *Manus*.

GLOS. Lat. In the civil law. A husband's sister. *Dig.* 38. 10. 4. 6.

GLOSS. [L. Lat. *glossa*, q. v.] An annotation or comment on any passage in the text of a work, for the purpose of explanation. Particularly applied to the comments on the Roman law. See *Glossa*.

GLOSSA. L. Lat. [from Gr. *γλῶσσα*, a tongue.] A gloss, explanation or interpretation. The *glossæ* of the Roman law are brief illustrative comments or annotations on the text of Justinian's collections, made by the professors who taught or lectured on them about the twelfth century, and were hence called *glossators*. 1 *Mackeld. Civ. Law*, 66, § 80. These glosses were at first inserted in the text with the words to which they referred, and were called *glossæ interlineares*; but afterwards they were placed in the margin, partly at the side, and partly under the text, and called *glossæ marginales*. A selection of them was made by Accursius, between A. D. 1220, and 1260, under the title of *Glossa ordinaria*, which is of the greatest authority. *Id.* *ibid.*

Glossa viperina est que corrodit viscera textus. That is a viperous gloss which eats out the bowels of the text. 10 Co. 70, *Case of the Marshalsea*. Otherwise expressed, *Viperina est expositio que corrodit viscera textus.* 11 *Id.* 34 a, *Powlet's case*. 2 *Bulstr.* 79.

GLOSSATOR. L. Lat. [from *glossa*, q. v.] In the civil law. A commentator or annotator. A term applied to the professors and teachers of the Roman law in the twelfth century, at the head of whom was Irnerius. 1 *Mackeld. Civ. Law*, 66, § 80.

GLOUC. An abbreviation of *Gloucester*, (Gloucester,) in old English pleadings and records. *Towns. Pl.* 147. 1 *Inst. Cler.* 28.

GLOUCESTER or GLOCESTER. *Statute of.* A celebrated English statute, passed in the sixth year of the reign of Edward I. It is composed of fifteen chapters, in Law French, and is commented on by Lord Coke in his second Institute. It was the first statute that gave costs in actions. 2 *Reeves' Hist. Eng. Law*, 144, *et seq.*

GLYN. In old English law. A valley. *Co. Litt.* 5 b.

GO. [Lat. *ire*; L. Fr. *aler*.] In practice. To be dismissed from court. "To go without day," applied to a defendant, is to be finally dismissed, or discharged from the action. See *Day*, *Eat inde sine die*.

To issue from a court. "The court said a mandamus must go." 1 *W. Bl.* 34. "A mandamus had gone." *Id.* 63. "I think the mandamus ought not to go." Lawrence, J. 2 *East*, 218. "Let a super-seedeas go." 5 *Mod.* 421. "The writ may go." 18 *C. B.* (9 *J. Scott*), 35.

To rest; to proceed. "The case of *Buckland v. Tankard* goes on the ground of more or less difficulty," &c. Lord Ellenborough, 2 *East*, 458.

GOAT, Gote. In old English law. A contrivance or structure for draining waters out of the land into the sea. *Callis* describes *goats* as "usual engines erected and built with portcullises and doors of timber and stone or brick, invented first in Lower Germany." *Callis on Sewers*, [91,] 112, 113. *Cowell* defines *gote*, a ditch, sewer or gutter.

GODBOTE. Sax. [from *God*, and *bote*, a fine, or amend.] In old English law. A fine, or amercement anciently imposed for offences against religion; an ecclesiastical or church fine. *Cowell.* *Blount.*

GODGILD, Godgeld. Sax. [from *God*, and *gild* or *geld*, a payment.] In Saxon law. That which is paid or offered to God, or his service. *LL. Alured.* pref. *Spelman*, voc. *Goldum*.

GOD'S PENNY. In old English law. Earnest money. See *Denarius Dei*.

GOGGINGSTOLE. An old form of the word *cuckingstool*, (q. v.) *Cowell*.

GOLDA. L. Lat. In old records. A sink or passage for water. 2 *Mon. Angl.* 619. *Cowell*.

GOLDSMITHS' NOTES. In English law. Bankers' notes. Originally so called, because the bankers of London were originally goldsmiths also. *Wharton's Lex.*

GOLIARDUS. L. Lat. A jester, buffoon or juggler. *Spelman*, voc. *Goliardensis*.

GOOD. [L. Fr. *bon bien*.] Valid; sufficient in law; effectual; unobjectionable.

Responsible; solvent; able to pay an amount specified.

Of a value corresponding with its terms; collectable. A note is said to be *good*, when the payment of it at maturity may be relied on. See 26 *Vermont R.* 406-413.

GOOD IN PART, BAD IN PART. An instrument may be good in part, though void for the residue. See 8 *East*, 231, 236. As to the application of this rule to voluntary assignments, see *Burrill on Assignments*, 442-448.

GOOD ABEARING, (or ABEARANCE.) [Lat. *bonus gestus*.] In old English law. The exact carriage or behaviour of a subject to the king and his liege people, to which men were sometimes anciently bound, upon their evil course of life or loose demeanor. He who was bound to this was more strictly bound than to the peace; for the peace was not broken without an actual affray, battery, &c.; but this might be forfeited by the number of a man's company, or by his or their weapons. *Lamb. Eirenarch.* lib. 2, c. 2. *Cowell. Termes de la Ley*.

By the statute 34 Edw. III. c. 1, justices of the peace were empowered to bind over to the good behaviour towards the king and his people, all them *that be not of good fame*, wherever they be found. Blackstone refers to the provisions of this statute as still in force. 4 *Bl. Com.* 256. But according to Mr. Stephen, in what manner and to what extent they ought at the present day to be enforced, may be doubtful. 4 *Steph. Com.* 317.

GOOD CONSIDERATION. A consideration of blood, or of natural love and affection; as where a man grants an estate to a near relation, being founded on motives of generosity, prudence and natural duty.

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2 *Bl. Com.* 297, 444. It is technically distinguished from a *valuable* consideration, (q. v.)

GOOD COUNTRY. In Scotch law. Good men of the country. A name given to a jury. See *Bona patria*.

GOOD MAN. [L. Lat. *probus homo*.] A good and lawful man; (*probus et legalis homo*.) 3 *Bl. Com.* 102. Good men; (*probi* or *boni homines*, L. Fr. *bones gentis*.) Good and lawful men; (*probi et legales homines*.) *Mag. Chart.* 9 Hen. III. c. 14. Terms applied, in old English and feudal law, to persons of unexceptionable character, and especially such as were qualified to act as jurors or witnesses in courts. See *Boni homines, Legalis homo, Probus homo*. The expression "*good and lawful men*" continues to be used in modern law, and criers in American courts ordinarily address a jury as "*You good men*," &c.

GOOD WILL. The custom of any trade or business. The benefit or advantage attending a particular business, in consequence of the patronage it receives from constant or habitual customers. See *Story on Partn.* § 99. 1 *Hoffman's R.* 68, 69.

GOODS. [Lat. *bona*; Fr. *biens*.] A term applied to certain descriptions of things movable, and said to be one "of large signification." *Wilde, J. 3 Metcalf's R.* 367. In some of its connections, however, it is of more extensive import than in others. *Story, J. 2 Story's R.* 52. Strictly, it seems to be applicable only to *inanimate* movables, being in this respect less comprehensive than *chattels*, which include animals. 1 *Chitt. Gen. Pr.* 89, 90. 2 *Chitt. Bl. Com.* 384, note. Nor does it, according to Blackstone, embrace every variety even of inanimate property, *goods* being classed by him with plate, money, jewels, implements of war, garments and vegetable productions, as so many species of inanimate things. 2 *Bl. Com.* 389. So it has been held that the term "*goods*" in a deed or contract will not, in general, include fixtures. 1 *Chitt. Gen. Pr.* 90. In the United States, *goods* have been held to include money, bank notes and coin, promissory notes and the stock or shares of an incorporated company. 5 *Mason's R.* 537. See 2 *Story's R.* 52. 3 *Metcalf's R.* 365. 20 *Pick. R.* 9. See *Bona, Chattels*.

In wills, the term *goods* is taken in a large sense, and will comprise the entire personal estate of a testator, unless restrained by the context within narrower

limits. 1 *Jarman on Wills*, 692, (594, Perkins' ed. 1849.) It is called *nomen generalissimum*, and when construed in the abstract will embrace all the personal estate of a testator, as stock, bonds, notes, money, plate, furniture, &c. 1 *Roper on Legacies*, 250. *Ward on Legacies*, 208, 209. *Story*, J. 2 *Story's R.* 53. See *Household goods*.

Good, in the singular, is rarely used. 2 *Bl. Com.* 424, 425.

GOODS AND CHATTELS. [L. Lat. *bona et catalla*; L. Fr. *biens et cateux*.] A phrase very commonly used to designate personal property; the word *chattels* serving to extend its application to subjects which the word *goods* alone would not embrace. It includes not only personal property in possession, but also choses in action, and, by force of the word *chattels*, all animate as well as inanimate property, emblements and other vegetable productions, and leases for years of houses or lands. 12 *Co.* 1. 1 *Atk.* 182. 1 *Chitt. Gen. Pr.* 89, 90.

In *wills*, the term *goods and chattels* will, unless restrained by the context, pass all the personal estate, including leases for years, cattle, corn, debts and the like. *Ward on Legacies*, 208, 211.

GOODS AND MERCHANTIZE. [L. Lat. *bona et merchandiza*.] A phrase used to designate personal property. See *Vaugh.* 170, arg.

GOODS, WARES AND MERCHANTIZE. A phrase of frequent occurrence in statutes, pleadings and other instruments. In the Statute of Frauds, it has been held in Massachusetts, to include the stock of an incorporated company, but the point is not settled in England. 20 *Pick. R.* 9. 2 *Kent's Com.* 510, note. In Georgia, the words have been held not to include treasury checks. *Id. ibid.* *Dudley's R.* 28. See *Merchantize*.

GOOLE. [from Fr. *goulet*, or Lat. *gula*.] In old English law. A breach in a bank or sea-wall, or a passage worn by the flux and reflux of the sea. *Stat.* 16 and 17 *Car.* II. c. 11.

GORE. A small narrow slip of ground. *Kennett's Par. Ant.* 534, 393. *Cowell*.

GORS, Gorse, Gorce, Gort, Guort. L. Fr. and Eng. In old English law. A wear; a pool or pit of water, or confined place in a river, to take or keep fish in. *Domesday.* *Spelman.* *Britt.* c. 20, 62. *Co. Litt.* 5 b.

GOT. L. Fr. A sluice, drain or ditch. *Kelham.* See *Goat*.

GOULE D'AOUST. L. Fr. The gule of August, or the first of August. *Kelham*.

GRA'. An abbreviation of *gratia*. 1 *Inst. Cler.* 10.

GRACE. L. Fr. and Eng. [Lat. *gratia*.] Favor or indulgence, as distinguished from right. Acts of parliament granting pardons are called acts of *grace*. 1 *Bl. Com.* 184. *Plus de grace q' de droit*; more of favor than of right. *Britt.* c. 69.

GRACE, Days of. See *Days of grace*.

GRADALE, Graduale. L. Lat. In canon law. A book pertaining to the offices of the Romish church, and enumerated among its furniture in the Provinciale Anglicanum. *Lyndewode Prov. Angl.* lib. 3, tit. de eccles. edific. c. 2. *Spelman.* *Plowd.* 542.

GRADATIM. Lat. [from *gradus*, q. v.] In old English law. By degrees or steps; step by step; from one degree to another. *Bract.* fol. 64.

GRADUS. Lat. In civil and canon law. A degree in relationship. *Inst.* 2. 6. *Dig.* 38. 11. The word properly denotes a *step*, and is figuratively used, like the Gr. *βαθμῶν*, to express the course of relationship upwards, downwards, or collaterally, stepping, as it were, (*gradiendo*), from one person to another in the series. *Gradus dicti sunt à similitudine scalarum locorumque proclivium.* *Dig.* 38. 10. 10. 10. See *Degree*. *De gradu in gradum*; from degree to degree, or from step to step. *Bract.* fol. 374. *A gradu in gradum.* *Fleta*, lib. 6, c. 2, § 1. Bracton uses the word to signify the place occupied by a person in a scale or scheme of consanguinity; and where such place was left vacant by the death of such person, he calls it *gradus vacuus*, (a vacant or void degree.) *Bract.* fol. 134, 374. See *Fleta*, lib. 6, c. 17, § 4.

GRADUS. Lat. In old English law. Degree; rank; grade. Applied to the rank of a master in chancery, and of a serjeant at law. *Status et gradus*; the state and degree. *Treatise of the Masters of the Chaucerie*, III.

GRAFFARIUS, Grapharius. L. Lat. In old English law. A graffier, notary or scrivener. *Stat.* 5 *Hen.* VIII. c. 1.

GRAFIO, Graphio, Gravio, Gravius, Graphius. L. Lat. In early European law. A fiscal judge: and derivatively, a count, (*comes*;) a count's deputy, or vis-

count, (*vice comes*, reeve or sheriff;) a judge; a chief or presiding magistrate. Answering to the Anglo-Saxon *gerefa*, which Spelman supposes to be from the same root *gerefan*, or *reafen*, to take or exact; the proper meaning of the word, in his opinion, being an exactor, or collector of taxes, or public dues. *Spelman, in voce*. The word *grasto* is confined to the laws of the early continental nations, and is generally used to denote a fiscal judge or count. *L. Salic. titt. 33, 55. L. Ripuar. titt. 34, 84. See Judez fiscalis, Comes*. It occurs, however, in a charter of Kenulph, king of the Mercians, quoted in the *Monasticon Anglicanum*, tom. 1, p. 100. *Cowell. See Gravius, Greve*.

GRAFUM, Graffium. L. Lat. In old records. A writing book or register; a cartulary of deeds and evidences. *Cowell*.

GRAILE. The same as *Gradale*, (q. v.)

GRAIN. [Lat. *granum*.] The twenty-fourth (anciently the thirty-second) part of a pennyweight, or weight of an English penny. By the statute *Compositio Mensurarum*, 51 Hen. III., it was ordained that the penny sterling should weigh thirty-two grains of corn from the middle of the ear; (*ponderabit triginta et duo grana frumenti in medio spicae*.) These natural grains were afterwards reduced to twenty-four artificial grains. *Cowell. Spelman, voc. Denarius. Stow's Ann. cited ibid.*

GRAMMATOPHYLACIUM. Græco-Lat. [from Gr. *γρᾶμμα*, writings, and *φύλαξ*, a keeper.] In the civil law. A place for keeping writings or records. *Dig. 48. 19. 9. 6.*

GRANATARIUS. L. Lat. In old English law. An officer having charge of a granary. *Fleta*, lib. 2, c. 82, § 1; c. 84.

GRAND. L. Fr. Great; large. *Grand arbres*; large trees. *Dyer*, 79, (Fr. ed.)

GRAND. [L. Fr. *graund*; Lat. *mag-nus*.] Great; large; high. A word formed from the French, and still in use; contrasted generally with *petty*, (Fr. *petit*.) and denoting superiority either in magnitude, number or quality, as *grand jury*, *grand larceny*; or in point of precedence, dignity, importance or legal efficacy, as *grand assize*, *grand cape*, *grand distress*, (qq. v.)

GRAND ASSIZE. [L. Lat. *magna assisa*.] In practice. A special or extraordinary kind of jury, introduced by king Henry II. for the trial of writs of right, the tenant or defendant being allowed the

choice of this mode of trial instead of that by battel, which previously was the only method in use. 3 *Bl. Com.* 341, 351. *Glanv.* lib. 2, cc. 6, 7. It consisted of four knights, returned by the sheriff, who chose twelve others to be joined with them; the whole assize thus being composed of sixteen jurors, or recognitors, as they were otherwise called. 3 *Bl. Com.* 351. *Glanv.* lib. 2, cc. 11, 12. 1 *Reeves' Hist. Eng. Law*, 86. See *De magna assisa eligenda*.

* * This kind of assize and the manner of choosing it are very fully described by Glanville, who is supposed by Sir William Blackstone to have advised the measure itself. 3 *Bl. Com. ub. sup.* The assize was called *grand*, according to Mr. Reeves, because the jurors were all knights, and were brought together also with more ceremony than those who composed the ordinary, minor or petit assize. 1 *Reeves' Hist. Eng. Law*, 86. *Spelman, voc. Assisa*. It continued in use in England down to a recent period, being abolished by statute 3 & 4 Will. IV. c. 42, § 13. A similar kind of jury was also formerly in use in the state of New-York, when writs of right were authorized forms of procedure. 1 *Rev. Laws* of 1813, 50.

GRAND BILL OF SALE. In maritime law. The German *bielbrief* has been sometimes so called. *Jacobsen's Sea Laws*, 12. The English, French and American register of a vessel commences with the contents of the *bielbrief*. *Id.* 13. See *Bielbrief*. The English cases speak of the transfer of a ship at sea by the assignment of the *grand bill of sale*; an expression which is understood to refer to the instrument whereby the ship was originally transferred from the builder to the owner, or first purchaser. 3 *Kent's Com.* 133.

GRAND CAPE. In practice. A judicial writ in the old real actions, which issued for the demandant, where the tenant, after being duly summoned, neglected to appear on the return of the writ, or to cast an essoin, or, in case of an essoin being cast, neglected to appear on the adjournment day of the essoin; its object being to compel an appearance. *Roscoe's Real Act.* 165, *et seq.* It was called a *cape*, from the word with which it commenced, and a *grand cape* (or *cape magnum*.) to distinguish it from the *petit cape*, which lay after appearance. *Id. ibid.* See *Cape*.

GRAND CAPE AD VALENTIAM. L. Lat. A species of grand cape which

issued against a vouchee, or person vouched to warranty in a real action. *Roscoe's Real Actions*, 268.

GRAND COUTUMIER, or *Costumier de France*. In early European law. A collection of the customs, usages and forms of practice which had been in use from time immemorial in the kingdom of France, first projected by Charles VII. in 1453, but not completed until 1609. *Crabb's Hist. Eng. Law*, 69. It consisted of the *coutumiers*, (or collections of customs,) of the various provinces and places in France. The best edition of this is by Richebourg, in four volumes folio. It contains near one hundred collections of the customs of provinces, and two hundred collections of the customs of cities, towns and villages. *Butler's Co. Litt.* Note 77, Lib. 3.

GRAND COUTUMIER DE NORMANDIE. L. Fr. A collection of the laws and dual customs of Normandy, composed about A. D. 1229, in the reign of Henry II. of England. *Hale's Hist. Com. Law*, c. 6. This, from its high antiquity, and the relation it bears to the feudal jurisprudence of England, is particularly interesting to an English reader. The most esteemed edition is that by Basnage, A. D. 1678. *Crabb's Hist. Eng. Law*, 69. *Butler's Co. Litt.* Note 77, Lib. 3. 1 *Reeves' Hist. Eng. Law*, 224, 225. *Butler's Hor. Jur.* 92. 3 *Ken's Com.* 501—503, note, *ad fin.*

GRAND DAYS. In English practice. Certain days in the terms, which are solemnly kept in the inns of court and chancery, viz. Candlemas day in Hilary Term, Ascension day in Easter, St. John the Baptist's day in Trinity, and All Saints in Michaelmas; which are *dies non-juridici*. *Termes de la Ley*. *Cowell*. *Blount*. *Wharton*. According to Mr. Holthouse, they are days set apart for peculiar festivity; the members of the respective inns being on such occasions regaled at their dinner in the hall, with more than usual sumptuousness. *Holthouse*, in *voc.*

GRAND DISTRESS. [L. Fr. *grand destresse*; L. Lat. *magna districtio*.] In English practice. A process which formerly issued in actions, where the tenant or defendant, after being attached, and so returned, neglected to appear; its object being to compel an appearance by distraining his goods and the profits of his lands. *Cowell*. *Britt* c. 26. 3 *Bl. Com.* 280. It is called *grand* from its extent and stringency,

and is still retained in the action of *quare impedit*. *Blount*. 3 *Steph. Com.* 662.

GRAND JURY. In criminal law. A jury of inquiry, summoned at courts of sessions and oyer and terminer, whose duty it is, after being duly sworn and charged by the presiding judge, to receive and hear complaints or accusations in criminal cases, and if they find them sustained by evidence, (which is presented on the part of the prosecution alone,) to find bills of indictment against the persons complained of.* 4 *Bl. Com.* 302, 303. 4 *Steph. Com.* 362, 370. It is called *grand*, to distinguish it from the ordinary or *petit* jury, being composed of a larger number of jurors, varying from twelve to twenty-three. *Id. ibid.* In New-York, it is composed of a number varying from sixteen to twenty-three. 2 *Rev. St.* [724.] 605, § 26. It is sometimes termed the *grand inquest*.

GRAND LARCENY. In English criminal law. A stealing of property of above the value of twelve pence. 4 *Bl. Com.* 241. So distinguished from *petit* larceny, which was theft of property to the value of twelve pence or under. The distinction between these two kinds of larceny is of great antiquity, and was only recently abolished in England by statute 7 & 8 Geo. IV. c. 29, ss. 2, 3, 4. *Fleta*, lib. 1, c. 38, § 10. 4 *Steph. Com.* 159. 2 *Russell on Crimes*, 1. In the United States it is generally retained, although the sum adopted as its basis is much above the old English standard. *Wharton's Am. Crim. Law* b. 5, ch. 5, § 1705, *et seq.* *Lewis' U. S. Crim. Law*, 442, 444. 2 *Russell on Crimes*, 1. (Am. ed. 1850, note.) In New-York, grand larceny is the felonious taking of personal property of the value of more than twenty-five dollars. 2 *Rev. St.* [679.] 566, § 63.

GRAND SERJEANTY. [L. Fr. *grand serjeantie*; L. Lat. *magna serjeantia* or *serjantia*, or *magnus servitium*.] In English law. A species of tenure in *capite*, (called, though improperly, a species of knight service,) whereby the tenant was bound, instead of serving the king generally in his wars, to do some special honorary service to the king in person; as to carry his banner, his sword, or the like, or to be his butler, champion, or other officer, at his coronation. 2 *Bl. Com.* 73. *Litt. sect.* 153. *Britt* c. 66. *Fleta*, lib. 2, c. 4. 1 *Steph. Com.* 188. It was called *grand* serjeanty, as well in respect of the excellency

and greatness of the person to whom it was to be done, as of the honor of the service itself. *Co. Litt.* 105 b. The services of this tenure are still reserved by the statute 12 Car. II. c. 24, though the tenure, in other respects, is converted into free socage. 1 *Steph. Com.* 197, 198. 1 *Crabb's Real Prop.* 591, 592, § 747.

GRANGE. L. Fr. and Eng. [*L. Lat. grangia, grangea.*] A building where corn or grain is kept and stored; a barn or granary. *Co. Litt.* 5 a. *Spelman*, voc. *Granarium*. *Reg. Orig.* 289 b.

The term also includes other outbuildings necessary for husbandry, as stables for horses, stalls for oxen, and other animals, &c. *Id. ibid.* *Lyndewode*, *Prov. Angl.* lib. 2, tit. *De judiciis*, c. *Item omnes*. *Spelman*. It is used, in England, as an ordinary term for a farm-yard or farmery. *Brande*.

GRANGEA, *Grangia*. L. Lat. In old English law. A grange; a barn where grain is threshed and kept. *Fleta*, lib. 2, c. 82. *Reg. Orig.* 289 b. *Stat. Westm.* 2, c. 39. *Spelman*, voc. *Granarium*. See *Grange*.

GRANGIARIUS, *Grangerus*. L. Lat. In old English law. A granger, or grange-keeper. *Fleta*, lib. 2, c. 82, § 1. *Cowell*.

GRANT. L. Fr. Great. *Desuth le grant seal le roy*; under the great seal of the king. *Stat. Conf. Carl.* 25 Edw. I. in not. *La grant chartre des franchises de Engleterre*. *Art. sup. Chart.*

GRANT. [*L. Lat. concessio.*] In a large sense—the passing of a thing from one person to another. In this sense, it comprehends feoffments, bargains and sales, gifts, leases, &c., for he that gives or sells grants also. *Shep. Touch.* 228. *Story*, J. 4 *Mason's R.* 69.

In a more strict and proper sense—a species of common law conveyance, appropriate to the transfer of incorporeal hereditaments, (as rents, &c.) and of estates in expectancy, (as reversions and remainders,) in corporeal hereditaments, of which no livery, (that is, delivery,) can be made. 2 *Bl. Com.* 317. 1 *Steph. Com.* 474. Hence these hereditaments and estates are said to *lie in grant*, while corporeal hereditaments in possession are said to *lie in livery*. *Id. ibid.* *Co. Litt.* 172 a. *Shep. Touch.* 228. *Watkins' Conv.* 193. 4 *Kent's Com.* 490. The appropriate and operative words of a grant are, “have given and granted,” (anciently, *dedi et concessi*.) 2 *Bl. Com.* *ub. sup.* 1 *Steph. Com.* *ub. sup.*

In the United States, the term *grant* continues, in general, to be specifically applied to the conveyance of incorporeal hereditaments, and to letters patent from government. In New-York; however, by the Revised Statutes, this ancient and distinctive meaning of the word has been abrogated; and deeds of bargain and sale, and of lease and release, including all conveyances of the inheritance or freehold, are declared to be deemed *grants*. 1 *Rev. Stat.* [738.] 731, §§ 137, 138, 142. 4 *Kent's Com.* 491, 492. So, in Massachusetts, the term *grant* in a statute, means the transfer of lands or houses by deed or other effectual conveyance, and does not apply exclusively to incorporeal hereditaments. 2 *Hilliard's Real Prop.* 297. So, in New-Hampshire and Maine. *Id. ibid.* See *United States Digest*, *Grant*.

GRANT OF PERSONAL PROPERTY. A method of transferring personal property, distinguished from a gift by being always founded on some consideration or equivalent. 2 *Bl. Com.* 440, 441. Its proper legal designation is an *assignment*, or *bargain and sale*. 2 *Steph. Com.* 102.

To GRANT. [*L. Lat. concedere.*] An operative word of conveyance, particularly appropriate to deeds of grant, properly so called, but used in other conveyances also, such as deeds of bargain and sale, and leases. See *Grant, Bargain and Sale, Lease*. According to Lord Coke, the word *concessi* (I have granted) may amount to a grant, a feoffment, a gift, a lease, a release, a confirmation, a surrender, &c.; and it is in the election of a party to use it to which of these purposes he will. *Co. Litt.* 301 b. It is the general operative word of conveyance in New-York. 4 *Kent's Com.* 491. It was formerly held, in England, to amount to a covenant in law. See *Concessi*. But by a late act of parliament, it is declared not to imply any covenant in law in respect of any tenements or hereditaments, except in cases where, by act of parliament, it is declared that it shall have such effect. *Stat. 8 & 9 Vict.* c. 10, s. 6. In Pennsylvania, the words “grant, bargain and sell,” in a conveyance, have been held not to amount to a general warranty, but merely to a covenant that the grantor has not done any act, nor created any incumbrance whereby the estate granted by him may be defeated. 2 *Binney's R.* 95. And the same rule prevails in Delaware and Missouri. *Holthouse's Law Dict.* (Am. ed.)

See 2 *Hilliard's Real Prop.* 365. In Mississippi it is otherwise. See 26 *Mississippi R.* 599.

GRANTEE. [L. Lat. *concessus.*] The person to whom a grant is made.

GRANTOR. [L. Lat. *concessor.*] The person by whom a grant is made.

GRANTZ, Graunts, Grauntez, Graints. L. Fr. *Grandeas*, or great men. *Parl. Rot.* 6 Edw. III. n. 5, 6. *Kelham.*

GRAPHIA. L. Lat. [from Gr. *γραφία*.] In old European law. A writing. *Spelman.*

The office or territorial jurisdiction of a *graphio* or *grafio*. *Id.* See *Grafio*.

GRASS-HEARTH. [q. d. *graze earth.*] In old records. The grazing or turning up the earth with a plough. The name of a customary service for inferior tenants to bring their ploughs, and do one day's work for their lords. *Kennett's Par. Ant.* 496, 497. *Cowell.*

GRASSUM. See *Gressume*.

GRATIS. Lat. In old English law. Freely; gratuitously; without fee. *Mag. Cart.* 9 Hen. III. c. 26. *Id. Johan.* c. 35. The original articles (c. 26) have *liberè*.

GRATIS DICTUM. Lat. A voluntary assertion; a statement which a party is not legally bound to make, or in which he is not held to precise accuracy. 2 *Ken's Com.* 486. 6 *Metcalf's R.* 260.

GRATUITOUS. [Lat. *gratuitus*, from *gratis*, freely.] Without valuable or legal consideration. A term applied to deeds of conveyance. See *Gift*.

In old English law. Voluntary; without force, fear or favor. *Bract.* fol. 11, 17.

GRAUND, Graunde. L. Fr. [from Lat. *grandis*, great.] Great; high. *A la graunde grevaunce*; to the great grievance. *Britt.* c. 21. *Graund treson*; great or high treason. *Id.* c. 8.

GRAUNT, Graunte. L. Fr. Great. *Graunt duresce*; great hardship. *Yearb.* P. 2 Edw. II. 39.

GRAUNTE. L. Fr. Grant. *Britt.* c. 30.

GRAVA, Grova. L. Lat. In old English law. A grove; a small wood; a coppice or thicket. *Co. Litt.* 4 b. *Cowell.* *Blount.* *Spelman.*

A thick wood of high trees. *Dugdale's Warwickshire*, 503 b. *Blount.*

GRAVAMEN. L. Lat. [from *gravare*, q. v.] In old English law. Injury; oppression. *Ad gravamen tenentis sui.* *Fleta*, lib. 2, c. 47, § 10.

A grievance, or thing complained of;

the essence of a complaint. A cause of complaint. *Lee, C. J. 1 W. Bl.* 25.

GRAVARE. Lat. In old English law. To grieve or aggrieve; to injure or oppress. *Stat. Westm.* 2, c. 36, 37. *Gravati*; aggrieved. *Id. ibid.*

GRAVIS. Lat. Grievous; great. *Ad grave damnum*; to the grievous damage. 11 *Co.* 40.

GRAVIUS, Gravia. L. Lat. In old European law. A grave; a chief magistrate or officer. A term derived from the more ancient *grafio*, and used in combination with various other words, as an official title in Germany; as *Margravius*, *Rheingravius*, *Landgravius*, &c. *Spelman*, voc. *Grafio*.

GR'E. A contraction of *Grave*. 1 *Inst. Cl.* 10.

GREAT TITHES. In English ecclesiastical law. Tithes of corn, peas and beans, hay and wood. 2 *Chitt. Bl. Com.* 24, note. 3 *Steph. Com.* 127.

GREE, Gre. L. Fr. Satisfaction; contentment. *A faire gree*; to make satisfaction. *Artic. sup. Chart.* c. 12. *Soit gre maintenant fait.* *Id.* c. 2. *Fra gree al defendaut*; shall make satisfaction to the defendant. *Britt.* c. 25. *Cowell.*

Agreement; will; consent. *Per le gree ou sans le gree*; by the consent, or without the consent. *Stat. Westm.* 1, c. 1. See *Id.* c. 22. *Bon gree ou mal gree le tenant*; whether the tenant be willing or unwilling. *Britt.* c. 41. *De leur gree*; of their own accord. *Id.* c. 27.

Cowell treats this as an English word, and it may have anciently been used as such; but the passages above quoted show it to be French. It seems to be the root of the word *agree*.

GREEK. An important language in law, being the language of a large portion of the *Corpus Juris Civilis*. The Novels of Justinian and his successors are, almost without exception, written in Greek; several of the constitutions in the Code are in the same language; and extracts from Greek writers, with numerous detached words and phrases, are scattered through the *Pandects*. The compilation called the *Basilica*, (q. v.) embracing the whole of Justinian's collections, is also written in the same language.

This Greek of the civil law, however, is, to a great extent, a corrupt and barbarous dialect, resembling in its uncouth combinations those varieties of the Latin and

French, known as LawLatin and LawFrench, which were for so long a period the languages of the law and practice of England, and obviously framed on the same principles. Its peculiarities are (1) the conversion of Latin words into Greek, by simply writing them in Greek letters; (2) the mixture of Latin and Greek words together; and (3) the formation of new words by giving to Latin words Greek terminations.

Of the first of these peculiarities, (Latin in Greek letters,) Sir William Blackstone has given a few examples in his commentaries. 3 *Bl. Com.* 321. The following may be added:

δοξί, (*dux*.) *Cod.* 1. 46. 5. *Nov.* 103, c. 2, 3.
 εξηρηδάτους, (*exheredatus*.) *Nov.* 1, c. 1, § 4.
 κάσσον, (*casu*.) *Nov.* 2, c. 4.
 κονσουλάριος, (*consularis*.) *Nov.* 8.
 λεγάτα, (*legata*.) *Cod.* 6. 4. 18.
 μοδράτωρ, (*moderator*.) *Nov.* 28, tit.
 ονγκία, (*uncia*.) *Nov.* 18, in tit.
 ούσούφρουκτος, (*usufructus*.) *Nov.* 22, c. 33.
 ταβουλάριος, (*tabularius*.) *Nov.* 1, c. 2, § 1.
 πραιπόσιτος, (*præpositus*.) *Cod.* 11. 7. 16.
 φάκτοις, (*factis*.) *Nov.* 68, in tit.

The following present examples of Greek and Latin words, intermixed:

τὸ τοῦ mortis causâ ὀρεῖται. *Nov.* 1, c. 1, § 4.
 esse bona gratia σταλέντος. *Nov.* 22, c. 30.
 εἰ μὴ καλῶς εἴη ὁ testator. *Nov.* 18, in tit.

And the following exhibit the still more barbarous combinations produced by adding to Latin words Greek terminations:

abstinaρειν. *Nov.* 89, c. 3.
 calumniας. *Nov.* 49.
 consistorianῶν. *Nov.* 44, c. 2. *Nov.* 105.
 damnateν. *Nov.* 12.
 emancipationες. *Nov.* 81, pr.
 intercessionες. *Nov.* 61, c. 1.
 laterculov. *Nov.* 8, c. 1.
 legis actionας. *Nov.* 81, pr.
 privatov. *Nov.* 8, c. 7.
 Quintov, Mutiov, Scævolas. *Nov.* 22, c. 43.
 sportulov. *Nov.* 82, c. 7.

In contrast with the practice of writing Latin words in Greek characters, may be mentioned the still more common one of writing Greek words in Latin letters: such as *chirographum*, *grammatophylacium*, *ergolabi*, *idiochira*, *irenarcha*, *logographi*, *naulerus*, and others. These words are of constant occurrence throughout the *Corpus Juris Civilis*, and present additional evidences of the extent to which the law of the Roman empire has been indebted to the language of Greece.

GREEN CLOTH. In English law. A board or court of justice held in the counting-house of the king's [or queen's] household, and composed of the lord steward and inferior officers. It takes its name from the green cloth spread over the board at which it is held. *Wharton's Lex.* *Cowell*, voc. *Counting-house*.

GREENHEW, Grenehugh. In forest law. The same as *vert*, (q. v.) *Manwood*, part. 2, c. 6, nu. 5. *Termes de la Ley*.

GREEN WAX. [L. Lat. *viridis cera*.] In old English law. The estreats of issues, fines and amerciements in the exchequer, delivered out to the sheriffs under the seal of that court made in *green wax*, to be levied by them in their several counties. *Stat.* 42 *Edw.* III. c. 9. *Stat.* 7 *Hen.* IV. c. 3. *Termes de la Ley.* *Cowell.* 4 *Inst.* 107. See *Estreat*.

GREEVE. L. Fr. Grievous. *Stat. Westm.* 1, c. 5. See *Greve*.

GREGORIAN CODE. The code or collection of constitutions made by the Roman jurist Gregorius. See *Codex Gregorianus*.

GREINDER. L. Fr. Greater. *Greinder ou meinder*; greater or less. *Litt.* sect. 120. *Greignour* and *greynour* are old forms of the word. *Kelham*.

GREMIUM. Lat. Bosom. *De gremio mittere*; to send from the bosom. A term formerly used to denote the sending of a person as a delegate from a conventual church, monastery, or other body of persons; à *latere legere* being the proper phrase where the delegate was sent by an individual. *Spelman*.

GRESSUME, Gressum. In English law. A customary fine due from a copyhold tenant on the death of the lord. 1 *Str.* 654. 1 *Crabb's Real Prop.* 115, § 778. Called also *grossome*, (q. v.) and in Scotch law *grassum*. *Bell's Dict.* voc. *Teinds*.

This word seems to be a derivation or corruption of the Lat. *ingressus*, (entry.) *Et dant domino de fine pro ingressu suo habendo in dicto messuagio*; and they give to the lord as a fine for having his entry in the said messuage. *Charituary*, quoted *Blackst. L. Tr.* 108, note.

GREVA. L. Lat. [Fr. *greve*.] In old records. The sea-shore, sand or beach. 2 *Mon. Angl.* 625. *Cowell*.

GREVE, Gereve. Sax. [from Sax. *gerefa*, q. v.] The contracted form of *gerefa* or *grefa*, used in the time of Edward the

Confessor, to denote a chief magistrate or lord, (*praefectus, praepositus*.) *LL. Edw. Conf.* c. 35. *Spelman*, voc. *Grafo*. Answering to the Germ. *grave*, from *grafio*, (q. v.) Afterwards still further shortened by the Anglo-Normans into *reeve* or *reeve*, which continues to be used in English law. *Spelman*, ub. sup. *Cowell*. *Blount*. There were various compounds of this word, as *shire-reeve*, or *shire-reeve*, the chief officer of the shire or county, now *sheriff*; *port-reeve*, the chief magistrate of a port; *led-reeve*, of a lathe; *hundred-reeve*, of a hundred; *tun-reeve*, of a town or vill, and the like. *Spelman*, ub. sup. See *Reeve*, *Reeve*.

GREVE, *Greeve*, *Gref*. L. Fr. [from Lat. *gravis*.] Grievous; severe. *Et terra en le greve mercy le roy*; and shall be in the grievous mercy of the king; shall be heavily amerced. *Stat. Westm.* 1, c. 15.

GREVEMENT. L. Fr. Grievously; heavily, or severely. *Soit grevement rente*; he shall be grievously fined. *Stat. Westm.* 1, c. 16. See *Britt.* c. 30.

GREVER. L. Fr. To hurt or harm. *Britt.* c. 22.

To prejudice or injure. *Id.* cc. 28, 39.

GRIEVED. Aggrieved. 3 *East*, 22.

GRITH. Sax. Peace.

GRITHBRECH. Sax. [from *grith*, peace, and *brych*, a breach or breaking.] In Saxon and old English law. A breach or violation of the peace. *In causis regis* grithbrech, 100 *sol.*—*emendabit.* *LL. Hen.* I. c. 36. *Spelman*. Sometimes called *frithbrech*. *LL. Ethelred.* c. 6.

GRITHSTOLE. Sax. [from *grith*, peace, and *stol*, a seat or chair.] In Saxon law. A seat, chair, or place of peace; a sanctuary; a stone within a church gate, to which an offender might flee. So called in an old rhyming charter of King Athelstan to the chapel of St. Wilfrid of Rippon:

And within yair Kyrke yate,
At ye stan yat *Grithstole* hate.

Skene writes the word *girtholl*.

GROCER. In old English law. A merchant or trader who engrossed all vendible merchandise; an engrosser. *Stat.* 37 *Edw.* III. c. 5. See *Engrosser*.

GRONNA. L. Lat. In old records. A deep hollow or pit; a bog or miry place. *Cowell*. *Spelman* doubts as to the meaning of this word.

GROS. L. Fr. Substance. *En gros*; in substance. *Britt.* c. 22.

Substantial; material; essential. *Sur*

ascus *gros point*; upon any material point. *Id.* c. 98.

Great; large. *Gros mercre*; large wood. *Yearb.* P. 7 *Hen.* VI. 47.

The whole of a thing. *Mettes le gros avant le parcel*; put the whole before the part. T. 5 *Edw.* III. 29.

GROSS. [L. Fr. *grossa*, *gros*; L. Lat. *grossus*.] Great or large. See *infra*.

In large quantities. *In grosso*; in the gross, by the wholesale. See *Grossus*.

Whole or entire; absolute or independent; the opposite of *appendant*. *Cowell*. See *Common in gross*.

GROSS AVERAGE. [L. Lat. *avaris grossa*.] In maritime law. That kind of average which falls upon the *gross* amount of ship, cargo and freight. 3 *Ken's Com.* 232. More commonly termed *general average*, (q. v.)

GROSS NEGLIGENCE or NEGLECT. [Lat. *magna*, or *crassa negligentia*.] In the law of bailment. The want of slight diligence. *Story on Bailm.* § 17. The want of that care which every man of common sense, how inattentive soever, takes of his own property. *Jones on Bailm.* 118. 2 *Ken's Com.* 560.—The omission of that care which even inattentive and thoughtless men never fail to take of their own property. *Clifford*, J. 20 *Howard's R.* 367. Gross negligence imports not a malicious intention or design to produce a particular injury, but a thoughtless disregard of consequences; the absence rather than the actual exercise of volition with reference to results. *Sanford*, J. 23 *Connecticut R.* 443. And see 16 *Howard's R.* 469.

GROSSA. L. Lat. In old English law. A groat. *Cowell*.

A gross. 1 *Mon. Angl.* 118. *Town.* Pl. 173.

GROSSE, *Gros*. L. Fr. Great; large. *Grosses dimes*; great tithes. *Yearb.* P. 5 *Edw.* III. 18.

GROSSE AVANTURE. Fr. In French marine law. The contract of bottomry. *Ord. Mar.* liv. 3, tit. 5. See *Bottomry*.

GROSSE BOIS, *Gros bois*, *Grosse bois*, *Grosse boyes*. L. Fr. Great or large wood; timber. *Cowell*. 2 *Inst.* 642. *Amb.* 133. *Gros bois* is not merely *haut bois* as distinguished from *sub-bois*, but is a distinct subject from both. Lord Ellenborough, 4 *M. & S.* 136.

GROSSEMENT. L. Fr. Largely, greatly. *Grossement enscint*; big with child. *Plowd.* 76. 2 *Mod.* 8.

GROSSOME. In old English law. A fine, or sum of money paid for a lease. *Plowd.* 270, 271. Supposed to be a corruption of *gersuma*, (q. v.) See *Gressume*.

GROSSUS. L. Lat. In old English law. Large. *Grossas piscis*; large or great fish. *Bract.* fol. 14, 120. *Grossas quercus*; large oaks. *Fleta*, lib. 1, c. 24, § 8. *Grossi arbores*; great trees or wood. *Cro. Eliz.* 244.

In large quantities. *Tam in grosso, quam in retalia*; as well by the wholesale as by retail. *Reg. Orig.* 184.

Important or material. *Stat. Westm.* 2, c. 30.

Excessive; extreme. *Ignorantia grossa*; gross ignorance. *Fleta*, lib. 4, c. 17, § 11.

GROUND ANNUAL. In Scotch law. A ground rent payable out of the ground before the tenement in a burgh is built; used in contradistinction to the term *feu-annual*. *Scotch Dict. Skene de Verb. Sig. voc. Annuell.*

GROUND RENT. Rent paid for the privilege of building on another's land. *Webster.* A rent paid by a lessee who has built on the ground leased; and thus distinguished from the rent paid to him by the tenants of the buildings.*

In Pennsylvania, this term is used to denote a fee farm rent. 1 *Hilliard's Real Prop.* 239.

GROVA, Grava. L. Lat. In old records. A grove. *Spelman*, voc. *Grava*.

GROWING CROPS of grain, and other annual productions raised by cultivation of the earth and industry of man, are personal chattels. 1 *Deno's R.* 550. Growing trees, fruit or grass, and other natural products of the earth, are parcel of the land. *Id. ibid.*

GROWING, (WOOD,) although it sounds in the present tense, to be taken in the future, unless stated to be (*nunc*) now growing. 3 *Leon.* 54, 55. *Id.* 29, 30.

GRUME. L. Fr. Grain. *Kelham*.

GUADAGIUM, Guidagium. L. Lat. [Fr. *guydage*; from Sax. *wey*, way; quasi *waidagium*.] In old law. Guidage or conduct; the compensation given therefor. That which is given for safe conduct through another's territory. *Spelman. Præters.*

GUADIA, Wadia. L. Lat. In old European law. A pledge. *Spelman. Calv. Lex.*

A custom. *Spelman.*

GUARANTEE is used both as a noun and verb, as another form of *guaranty*, (q. v.)

GUARANTOR. A person who undertakes to guaranty; a warrantor; a surety.

GUARANTY, Guarantee. L. Fr. and Eng. A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who, in the first instance, is liable to such payment or performance. *Fell on Guaranties*, 1. 3 *Ken's Com.* 121.—An engagement to be responsible for the debts or duty of a third person, in the event of his failure to fulfil his engagement. *Story on Contracts*, § 852. The primary meaning of guaranty is an undertaking to pay the debt of another in case he does not pay it. 24 *Pick. R.* 250, 252. See *United States Digest*, Guaranty.

This word seems to be essentially the same with *warranty*; being scarcely distinguishable from *garrantie* and *garranty*, (qq. v.) the old French forms of that word. *Guarantie* is the form used by Mr. Fell in his Treatise.

To **GUARANTY** (or **GUARANTEE**.) [L. Lat. *guarentare, guarentisare*.] To become responsible for the payment of money or the performance of a duty by another person; to warrant the payment of a debt or performance of a duty by another, who is primarily and properly liable to pay or perform it; to undertake that a person shall pay a certain debt or perform a certain duty to another, or, in case of failure on his part, that the party guaranteeing will himself pay the debt, or answer for the default. The obligation of a guaranty is essentially in the *alternative*, as is noticed by Britton in his definition of *garauiter*, (to warrant.) *Britt.* c. 75. See *Guaranty*.

GUARDIA, Wardia, Warda. L. Lat. [from Fr. *garder*, to keep.] Ward; custody; safe keeping; protection. *Spelman. Feud. Lib.* 1, tit. 2. See *Ward*.

GUARDIAN, Gardian, Gardeyne. [from Fr. *gardein*, (q. v.); L. Lat. *guardianus, guardianus*; Lat. *custos, tutor, curator*.] A keeper or protector; one who has the charge or custody of any person or thing. *Cowell. Spelman, voc. Guardianus, Guardia.*

In a stricter sense, one who has or is entitled to the custody of the person or property of an infant; answering to the *tutor* and *curator* of the civil law. *Cowell, voc. Gardeyne.* 1 *Bl. Com.* 460.

GUARDIAN BY NATURE. The father, and, on his death, the mother of a child. 1 *Bl. Com.* 461. 2 *Kent's Com.* 219. This guardianship extends only to the custody of the person of the child, to the age of twenty-one years. *Id. ibid.* Sometimes called *natural guardian*, but this is rather a popular than a technical mode of expression. 2 *Steph. Com.* 337. Guardianship by nature, in the correct and technical meaning of the term, is that which belongs to the ancestor in respect of his heir apparent, male or female. *Id. ibid. Harg. Co. Litt. Notes* 63—71, lib. 2.

GUARDIAN FOR NURTURE. The father, or, at his decease, the mother of a child. 2 *Steph. Com.* 338. This kind of guardianship extends only to the person, and determines when the infant arrives at the age of fourteen. *Id. ibid.* 2 *Kent's Com.* 221. 1 *Bl. Com.* 461. Supposed to be obsolete in the United States. 2 *Kent's Com. ub. sup.*

GUARDIAN IN SOCAGE. A species of guardian who has the custody of the infant's lands as well as of his person, until the age of fourteen. This kind of guardianship springs wholly out of tenure, and applies only to lands which the infant acquires by descent. By the common law, it devolves to the next of blood to whom the inheritance cannot possibly descend, and for this reason it is supposed that it can hardly be said to exist in this country. 1 *Bl. Com.* 461, 462. 2 *Steph. Com.* 338. 2 *Kent's Com.* 221, 223.

GUARDIAN BY STATUTE, or Testamentary Guardian. A guardian appointed for a child by the deed or last will of the father, and who has the custody both of his person and estate until the attainment of full age. This kind of guardianship is founded on the statute of 12 Car. II. c. 24, and has been pretty extensively adopted in this country, with the exception of New-England. 1 *Bl. Com.* 462. 2 *Steph. Com.* 339, 340. 2 *Kent's Com.* 224—226. See *United States Digest*, Guardian and Ward.

GUARDIAN BY APPOINTMENT OF THE COURT OF CHANCERY. The most important species of guardian in modern law, having custody of the infant until the attainment of full age. It has, in England, in a manner superseded the guardian in socage, and in the United States the guardian by nature also. 2 *Steph. Com.* 341. 2 *Kent's Com.* 226. Under this title are included guardians appointed by

all courts having chancery or equity powers, as orphans' courts, surrogates' courts, courts of probate and the like. *Id. ibid. note.* See *United States Digest*, Guardian and Ward.

GUARDIAN AD LITEM. A guardian appointed by a court of justice to prosecute or defend for an infant, in any suit to which he may be a party. 2 *Steph. Com.* 342. Most commonly appointed for infant *defendants*; infant plaintiffs generally suing by *next friend*. See *Next friend*, *Prochein ami*. This kind of guardian has no right to interfere with the infant's person or property. 2 *Steph. Com.* 343. See *Ad litem*.

GUARDIAN (or GARDEYNE) DE L'EGLISE. L. Fr. A churchwarden, (q. v.) *Cowell*.

GUARDIAN (or GARDEYNE) OF THE PEACE. See *Conservator of the peace*.

GUARDIAN OF THE CINQUE PORTS. See *Warden of the Cinque Ports*.

GUARDIAN OF THE POOR. An officer appointed, in England, to act in lieu of an overseer. *Wharton's Lex.*

GUARDIAN OF THE SPIRITUALTIES. [L. Lat. *custos spiritualium*.] In English ecclesiastical law. The person to whom the spiritual jurisdiction of a diocese is committed, during the vacancy of the see. *Stat. 25 Hen. VIII. c. 21. Cowell. Blount. Termes de la Ley.*

GUARDIAN OF THE TEMPORALTIES. [L. Lat. *custos temporalium*.] In English ecclesiastical law. The person to whose custody a vacant see or abbey was committed by the king, who, as steward of the goods and profits thereof, was to give an account to the exchequer, and he into the exchequer. *Tomlins.*

GUARDIANUS. L. Lat. A guardian, keeper, or warden. *Spelman*, voc. *Guardia*. 3 *Salk.* 176. *Guardianus prissona de le Fleet*; Warden of the Fleet. 3 *How. St. Trials*, 11, 12. More commonly written *Gardianus*, (q. v.)

GUARENTISARE. *Garentisare.* L. Lat. To warrant. *Spelman*. More commonly written *Warrantizare*, (q. v.)

GUARNIMENTUM. L. Lat. [from Fr. *garnement*.] In old European law. A provision of necessary things. *Spelman*. A furnishing or garnishment.

GUARRA. L. Lat. War. See *Guerra*.

GUBERNATOR. Lat. In Roman law. The pilot or steersman of a ship. 2 *Peters'*

Adm. Dec. Appendix, lxxxiii. Molloy de Jur. Mar. 243.

GUERPI, *Guerpy*. L. Fr. Abandoned; left; deserted. *Britt.* c. 33.

GUERRA, *Guarra, Guerra, Werra*. L. Lat. [from Sax. *gar*, a weapon.] In old English law. War, either public or private. *Spelman*, voc. *Guarra*. In *tempore guerræ*; in time of war. *Mag. Chart.* 1 Hen. III. c. 34. The charters of John, (c. 41,) and of 9 Hen. III. (c. 30,) have *guerræ*. *Si tempore guerræ illata fuerit violentia, statim post guerram reclamet*, &c. if the violence was offered in time of war, immediately after the war he may reclaim, &c. *Bract.* fol. 16 b. See *Feud. Lib.* 2, tit. 27, § 18; tit. 28, § 1.

GUERRE, *Gurre, Gwer, Gere*. L. Fr. War. *Kelham*.

GUEROIER, *Guerryer*. L. Fr. To wage war; to go to war with. *Kelham*.

GUERRINUS. L. Lat. [from *guerra*, war.] Of, or relating to war; warlike; at war; hostile. *Spelman*, voc. *Guerra*. *Mag. Chart.* 1 Hen. III. c. 34. The charters of John, (c. 41,) and of 9 Hen. III. (c. 30,) have *guerriva* in this passage.

Tempus guerrinum; time of war. *Fleta*, lib. 5, c. 14, § 4.

GUEST. [Sax. *gest, gust*.] A lodger or stranger in an inn. *Jacob*.—A traveller or wayfarer, who takes temporary lodgings at an inn.* To be a *guest*, a person must be a *traveller*; an inhabitant or townsman who resides permanently at an inn, is a *boarder*. *Redfield, C. J. 26 Vermont R.* 343. See *26 Alabama R.* 377. *Goldthwaite, J. Id.* 378.

One becomes a *guest*, by going to an inn for mere temporary refreshment, either food or drink. *5 Term R.* 273. *5 Barbours' R.* 560. The length of time he remains at the inn is not important, if he remain there in the transitory character of a *guest*. *Redfield, C. J. 26 Vermont R.* 332. As to the liability of an inn-keeper for the goods of his *guest*, see *2 Kent's Com.* 592—597, and notes.

In the case of *McDaniels v. Robinson*, (*26 Vermont R.* 316,) it was held that the relation of *guest* is created by a person's putting his horse at an inn; and it will be extended to all his goods left at the inn, by his taking a room, and taking some of his meals at the inn, and lodging there a portion of the time. And that it is not necessary that the traveller should take all his meals at the inn, or lodge there every

night, in order to create the relation or constitute himself a *guest*.

GUEST TAKER, or GIST TAKER. In old English law. An agister. See *Agistator*.

GUET. In old French law. Watch. *Ord. Mar.* liv. 4, tit. 6.

GUIA. Span. [from Lat. *via*?] In Spanish law. The right of way for narrow carts. *White's New Recop.* b. 2, tit. 6, § 1. Called *carrera*. *Id.* note.

GUIDAGE, *Guydage*. [L. Lat. *guidagium*.] In old law. That which was given for safe conduct through a strange territory, or another's territory. *Cowell*.

The office of guiding of travellers through dangerous and unknown ways. *2 Inst.* 526.

GUIDON. An old French work on insurance, more commonly known as *Le Guidon*, (q. v.)

GUIFARE. *Guiphare, Huifare, Wi-fare*. L. Lat. and Lomb. In Lombardic law. To take possession or seisin of land, by fixing a staff in it, or making use of any other symbol of the act. *Spelman*.

GUILD. [L. Lat. *gilda*.] A company or corporation. See *Gild*.

GUILDHALL. The hall or place of meeting of a *guild*, or *gild*. See *Gild-halla*.

The place of meeting of a municipal corporation. *3 Steph. Com.* 173, note. The mercantile or commercial *gilds* of the Saxons are supposed to have given rise to the present municipal corporations of England, whose place of meeting is still called the *Guildhall*. *Id. ibid.*

GULD. Sc. In old Scotch law. A noxious herb growing among corn. *Skene de Verb. Sign.* voc. *Maneleta*.

GULE OF 'AUGUST. [L. Lat. *gula Augusti*; L. Fr. *goule de August*.] In old English law. The first of August; the same with St. Peter's day *ad vincula*. *Stat. Westm.* 2, c. 30. *Stat. 27 Edw. III.* st. 3. *Spelman. Cowell*.

GURGES. Lat. In old English law. A gulf, or deep pit of water. *Co. Litt.* 5 b. The same, according to Lord Coke, with a *gor*, or wear; in Domesday, *guort* or *gort*. *Id. ibid.* A place for taking fish. *Reg. Orig.* 108 b. *F. N. B.* 95 A. *Vaugh.* 108.

GUST, *Gest*. Sax. [Lat. *hospes*.] In old English law. A *guest*; a person who lodged a second night with another was so called, among the ancient Saxons. *Item secundum antiquam consuetudinem, dici po-*

terit de familia alienus qui hospitatus fuerit cum alio per tres noctes, quia prima nocte dici poterit maritus, secunda vero guest, tertia nocte, hospitem; also, according to ancient custom, it may be said of the family of one who has been lodged with another for three nights, that on the first night he may be called *maritus*, (unknown,) on the second night *guest*, (or guest,) on the third night, *hospitem*, (a domestic, or one of the household.) *Bract. fol. 124 b.*

GUTH, Jutes. L. Lat. Jutes; one of the three nations who migrated from Germany to Britain at an early period. According to *Speelman*, they established themselves chiefly in Kent, and the Isle of Wight.

GUTTER. [L. Lat. *gutturum*.] The diminutive of a sewer. *Cullis on Sewers*, [80,] 100.

GUTTURA. L. Lat. In old English law. A gutter, or drain. *Reg. Orig.* 104 b.

GWABB MERCHED. Brit. Maid's fee. A payment or fine made to the lords of some manors in England, upon the mar-

riage of their tenant's daughters, or otherwise on their committing incontinency. *Cowell. Blount. See Marchet, Lairwile.*

GWALSTOW. Sax. [from *gwal*, a gallows, and *stow*; a place; L. Lat. *gwalstowum*.] In old English law. A place of execution, (*locus occidendorum*.) *LL. Hen. I. c. 11. Spelman.*

GWAYF. The same as *waif*, (q. v.) *Par. Ant. p. 196. Cowell.*

GWELL. Brit. A gavel or well. 13 *Mees. & W. 521.*

GWERRA. L. Lat. In old English law. War. See *Guerra*.

GYLOUR. L. Fr. A deceiver. *Fit Assaver*, § 16.

GYLTWITE. Sax. In Saxon law. A fine, compensation or amends for a trespass or fraud. *Cowell. Blount.*

GYSARUM. In old Scotch law. A hand-axe. *Skene de Verb. Sign.*

GYVU, Gyu, Gieu, Gru. L. Fr. A Jew. *Et qe nul Gyvu, de ceo jour en asant*; and that no Jew, from this day forward. *Provis. de Judaismo*, 53 *Hen. III. Blount.*

